SUPREME COURT OF THE UNITED STATES.

No. 83.

JAMES PAYNE ET AL., PLAINTIFFS IN ERROR,

vs.

SANDERS NEELY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. GIDEON, printers.

SANDERS NEELY, }
vs.
JAMES PAYNE, et. al. }

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the November term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered that heretofore, to wit, on the 31st day of August, A. D. 1840, the following writ of summons ad respondendum issued out of the clerk's office at the court aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Southern district of Mississippi, } *ss:*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon James Payne, Filmer W. Green, and Abner E. Green, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to Sanders Neely, a citizen of the State of Louisiana, of a plea of trespass on the case to his damage ten thousand dollars, and that they do file their plea of defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 31st day of August,
[S. L.] A. D. 1840, and in the sixty-fifth year of the independence of the United States.

WM. BURNS, *Clk.*
By GEO. W. MILLER, *D. C.*

Marshal's return: "Executed on James Payne, F. W. Green, and A. E. Green, personally, and gave them a copy.

WM. M. GWIN, *Marshal.*
Per JNO. HUNTER, *D. M.*

October 8, 1840.

And afterwards, to wit, on the said 31st day of August, A. D. 1842, the plaintiff aforesaid, by his attorneys Quitman and McMurran, filed his declaration herein against the *the* said defendants in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court of the United States, ninth judicial circuit, November term, 1840.

Sanders Neely, a citizen of the State of Louisiana, complains of James Payne, Filmer W. Green, and Abner E. Green, citizens of the State of Mississippi, who were summoned to answer said plaintiff of a plea of trespass on the case upon promises: for that, whereas, the said James Payne, heretofore, to wit, on the twenty-first day of March, in the year eighteen hundred and thirty-nine, at Natchez, in the district aforesaid, made his certain bill of exchange in writing, dated the day and year aforesaid, and then and there directed said bill of exchange to Messrs. Bennett, Ferridays & Co., in parts beyond the State of Mississippi, to wit, in New Orleans, in the State of Louisiana, to wit, in the district aforesaid; and then and there requested the said Messrs. Bennett, Ferridays & Co., ninety days after the date thereof to pay to the order of said Filmer W. Green, by the name of F. W. Green, four thousand six hundred and thirty dollars, value received, which said bill of exchange the said Messrs. Bennett, Ferriday & Co., afterwards, to wit, on the day and year aforesaid, at New Orleans, to wit, at the district aforesaid, accepted upon sight thereof. And the said Filmer W. Green, by the signature of F. W. Green, afterwards, to wit, on the same day and year aforesaid, at the district aforesaid, endorsed the said bill of exchange, and thereby then and there ordered and appointed the said sum of money in said bill of exchange specified to be paid to the said A. E. Green, and then and there delivered the same to the said Abner E. Green, who then and there, by the signature of A. E. Green, endorsed and delivered the said bill of exchange to the said plaintiff. And the said plaintiff, in fact says, that afterwards, when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the twenty-second day of June, in the year eighteen hundred and thirty-nine, at New Orleans, to wit, at the district aforesaid, the said bill of exchange, so accepted and endorsed as aforesaid, was presented and shown to the said Messrs. Bennett, Ferridays & Co., for payment thereof, who were then and there requested to pay the said sum of money therein specified, according to the tenor and effect of the said bill of exchange and of their acceptance; but the said Messrs. Bennett, Ferridays & Co., did not, nor would at the time said bill of exchange was so presented and shown to them for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money in the said bill of exchange specified, or any part thereof, but wholly neglected and refused so to do, and therein wholly made default; and thereupon afterwards, to wit, on the day and year last aforesaid, at New Orleans, to wit, at the district aforesaid, the said bill of exchange was duly protested for non-payment thereof; all of which said several premi-

ses the said defendants severally and respectively, afterwards, to wit, on the same day and year last aforesaid, had notice, by means whereof, the said defendants severally and respectively became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, when they or either of them should be thereto afterwards requested. And being so liable, the said defendants in consideration thereof afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, severally undertook and promised the said plaintiff to pay him the said sum of money, when they or either of them should be thereto afterwards requested.

Nevertheless the said defendants, not regarding their said several promises and undertakings, have not as yet, nor has either of them, paid the said several sums of money above mentioned, or either of them, or any part thereof to the said plaintiff, although often requested so to do, but the said defendants, or either of them, to pay him the same have hitherto wholly refused, and still do neglect and refuse, to the damage of the said plaintiff of ten thousand dollars, and therefore he sues, &c.

QUITMAN & McMURRAN,
Atty. for plffs.

Copy of bill of exchange.

Exchange for $4,630. NATCHEZ, 21*st March*, 1839.

Ninety days after date of this first of exchange, (second unpaid,) pay to the order of F. W. Green four thousand six hundred and thirty dollars, value received, and charge the same to account.

Your obedient servant,

JAMES PAYNE.

To Messrs. BENNETT, FERRIDAYS & Co.,
New Orleans.

Endorsed—"F. W. Green," "A. E. Green."

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and for plea to the first count of said plaintiff's said declaration, say that the said bill of exchange, in said count mentioned and described, was on, to wit, the twentieth day of June, in the year eighteen hundred and forty, at, to wit, in the district aforesaid, contrary to the statute in such case made and provided, by the Mississippi Railroad Company, a bank in the said State of Mississippi, transferred to said plaintiff, and this they, the said defendants, are ready to verify; whereupon they pray judgment of said first count of said plaintiff's declaration, and that the same may be quashed.

EUSTIS & Co.,
Attys. for defts.

Personally appeared before me, the undersigned, a commissioner in and for the district aforesaid, James Payne, one of the above

named defendants, who, upon being duly sworn, saith that the matters and things in the said plea contained, so far [as] the same are stated upon his own knowledge, he knows to be true; that stated upon information derived from others he believes to be true in substance and in fact.

JAMES PAYNE.

Sworn to and subscribed this 22d January, 1842, before me.

M. BARRETT,
A Commr. U. S. Court.

And the said plaintiff, for replication to the plea of said defendants to the said first count, says that the said Mississippi Railroad Company did not, at the time mentioned in said plea, or at any other time, transfer to the said plaintiff the said bill of exchanges in said first count mentioned, contrary to the statute in such case made and provided, as is alleged in said plea, and this he prays may be inquired of by the country.

QUITMAN & McMURRAN, *for plff.*

Afterwards, to wit, at the said November term of the court aforesaid, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and forty-two, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys, and a jury being called, came, to wit, W. R. Dent, W. M. D. Sims, Janson Tullis, George Finncane, Donald McCaleb, A. A. Catlett, Wm. H. Taylor, L. S. Evans, Lewis McManus, H. Keating, Jona. Kittrell, J. C. McCallister, who being empannelled, tried, and sworn to speak the truth upon the issues joined, do say upon their oaths that they find for the plaintiff upon the issue joined, and assess the damages, by reason of the premises, at five thousand three hundred and eighty-six dollars and seventy-two cents.

And thereupon the said defendants move the court to arrest the judgment in this cause, for irregularity and defects in the form of the action, in this, that the plaintiff has declared in the same court against the drawer aud endorsers of a bill of exchange.

Which said motion being argued, and the court being now fully advised thereof, it is ordered that the same be overruled. Therefore it is considered by the court that the said Sanders Neely, plaintiff, recover against the said James Payne, Filmer W. Green, and Abner E. Green, defendants, the said sum of five thousand three hundred and eighty-six dollars and seventy-two cents, the damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended.

And the said defendants in mercy, &c.

The defendants suggest that there is error in the record, and pray a writ of error.

EUSTIS & CHAPLAIN.

Which said writ of error is granted, upon their executing bond, with security, conditioned according to law, which said bond, now approved by the court, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, } *sct:*

Know all men by these presents, that we, James Payne, Filmer W. Green, and Abner E. Green, and James Wood and Robert Y. Wood, are held and firmly bound unto Sanders Neely in the just and full sum of eleven thousand dollars, lawful money of the United States, to be paid to the said Sanders Neely, his lawful attorneys, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 25th day of November, A. D. one thousand eight hundred and forty-two.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson on the first Monday of November, A. D. 1842, judgment was rendered by the said court in favor of the said Sanders Neely against the said James Payne, Filmer W. Green, and Abner E. Green, for the sum of five thousand three hundred and eighty-six $\frac{72}{100}$ dollars, besides interest and costs of suit; and the said James Payne, Filmer W. Green, and Abner E. Green have sued out a writ of error, to operate as a supersedeas from the Supreme Court of the United States to reverse said judgment.

Now, if the said James Payne, Filmer W. Green, and Abner E. Green, shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge, if they the said James Payne, Filmer W. Green, and Abner E. Green, shall fail to make their plea good, then, and in that case, this obligation to be void; otherwise to remain in full force and virtue.

JAMES PAYNE, [SEAL.]
F. W. GREEN, [SEAL.]
A. E. GREEN, [SEAL.]
JAS. WOOD, [SEAL.]
ROBT. Y. WOOD, [SEAL.]

I approve of the above bond and securities.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

November 25th, 1842.

UNITED STATES OF AMERICA,
Southern district of Mississippi. } Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify that the foregoing seven pages, and what is contained on this page, con-

tain a full, true, and complete transcript of the record of the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 20th day of December, A. D. 1842. [SEAL.]

W. H. BROWN, *Clerk.*
By GEO. W. MILLER, *Dept. Clk.*

UNITED STATES OF AMERICA, *ss :*

To Sanders Neely, or Messrs. Quitman [and] McMurran, his attorneys at law, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and district of Mississippi, wherein James Payne, Filmer W. Green, and Abner E. Green, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the district of Mississippi, this 6th day of December, in the year of our Lord one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States. [SEAL.]

S. J. GOHLSON.

Rec'd, Dec. 17th, 1842.

ANDERSON MILLER, *Marshal.*
By W. H. MILLER, *Deputy.*

Executed this citation on Messrs. Quitman and McMurran, attorneys, &c., in person, this 17th day of December, 1842.

ANDERSON MILLER, *Marshal,*
By W. H. MILLER, *Deputy.*

Filed,

SUPREME COURT OF THE UNITED STATES.

No. 60.

CHARLES GRATIOT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF MISSOURI.

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THE UNITED STATES vs. CHARLES GRATIOT. } MISSOURI DISTRICT, *ss:*

Be it remembered that heretofore, to wit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and thirty-nine, the United States, by Mr. Magenis, their attorney, filed in the office of the clerk of the circuit court of the United States for the district of Missouri, their declaration in an action of assumpsit against Charles Gratiot, in the words and figures following, to wit:

Declaration.

In the circuit court, April term, 1839.

UNITED STATES OF AMERICA,
Missouri district, ss:

The United States of America, by their attorney, complain of Charles Gratiot, late chief engineer, of a plea of trespass on the case. For that whereas the said defendant heretofore, to wit, on the first day of January, 1839, at Washington city, to wit, at the district aforesaid, was indebted to the said plaintiffs in the sum of fifty thousand dollars, for so much public money by him the said defendant, as chief engineer as aforesaid, before that time had and received, to the use of the said plaintiffs; and being so indebted, he the said defendant in consideration thereof afterwards, to wit, on the day and year last aforesaid, at Washington city, to wit, at the district aforesaid undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of fifty thousand dollars when he the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant not regarding his said promise and undertaking, hath not as yet paid to the said plaintiffs the said sum of fifty thousand dollars, or any part thereof, but to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said plaintiffs of fifty thousand dollars; and therefore they bring their suit, &c.

On which declaration was the following endorsement: Let a summons issue.

ARTHUR L. MAGENIS,
U. S. attorney Mo. district.

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

Writ.

MISSOURI DISTRICT, *ss:*

The President of the United States to the marshal of the Missouri district, greeting:

You are hereby commanded to summon Charles Gratiot, that he be and appear before the circuit court of the United States for the eighth circuit, at the next term thereof to be held at the city of Saint Louis, in the district of Missouri, on the first day of April next, then and there to answer unto the United States of America of a plea of trespass on the case, to the damage of said plaintiffs of fifty thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the [L. S.] United States, the eighteenth day of February, in the year eighteen hundred and thirty-nine.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JOSEPH GAMBLE, *Clerk.*

Return.

And the marshal to whom the same was directed duly returned the said writ, with his return thereon endorsed as follows, to wit:

Executed this process by *leving* a *coppy* of the declaration and writ at the residance of the said Charles Gratiot, in the county of St. Louis, Missouri district, and by his acknowledgment of the service of said writ and declaration on the 15th day of March, 1839.

JAMES H. RELFE,
Marshal of the district of Missouri.
By his deputy JOSEPH CALDWELL.

And afterwards, at the April term of said circuit court, in the year aforesaid, the said Charles Gratiot, by Messrs. Bates & Gamble, his attorneys, appeared and filed his pleas to said action, in the words following, to wit:

Pleas—Non assumpsit.

And the said Charles Gratiot, by his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has above in declaring supposed; and of this he puts himself upon the country.

Set-off.

And for a further plea in this behalf the said defendant says, that the said plaintiff ought not to have and maintain the action aforesaid against him, because he says that, at and before the time of

the commencement of this suit, the said plaintiff was, and still is, indebted to this defendant in a large sum of money, exceeding the amount claimed in this suit by the plaintiff against the defendant, to wit: sixty thousand dollars for the work and labor, care, diligence, and responsibility of the defendant by him before the commencement of this suit done and performed and incurred in and about the affairs and business of the plaintiff, and at the plaintiff's request; and for performing the duties of agent for fortifications at Fortress Monroe and Fort Calhoun, two fortifications belonging to the plaintiff, for a long time, to wit, for ten years; and for disbursing and expending there, in and about the construction of the said two fortifications, large sums of money, to wit, to the amount of three millions of dollars, all which was done and performed by this defendant for the use, and at the request of, the said plaintiff; and for receiving and disbursing a large sum of money, to wit, one million of dollars, in and about the repairs and contingencies of fortifications of the plaintiff, for the use, and at the request of, the plaintiff; and also for the work and labor, care, diligence, skill, and responsibility of the defendant by him, before the commencement of this suit, done, bestowed, and incurred for the use of the plaintiff, and at the request of the said plaintiff, in and about the civil works of internal improvement of the said United States, and not pertaining to the ordinary and regular duties of this defendant as chief engineer as aforesaid; all which he is ready to verify. And he is ready and willing, and hereby offers, to set off and allow so much of the money due to him as aforesaid from the plaintiff, as may suffice to rebate and pay whatever sum may in this suit appear to be due from this defendant to the plaintiff; and as to the residue, he prays that the amount thereof may be ascertained, &c. Wherefore he prays judgment, &c.

And at the same term of said circuit court the said plaintiffs, by their attorney, filed their replication to said second plea, as follows, to wit:

Replication.

And the said plaintiff, as to the plea of the said defendant by him secondly above pleaded, say that they do not owe the said defendant the said sum of sixty thousand dollars, or any part thereof, in manner and form as the said defendant hath in his said second plea alleged. And this they pray may be inquired of by the country; and the defendant does the like.

And afterwards, at the same term of said circuit court, a jury was duly empanelled and sworn to try the issues between the said parties; and after hearing the evidence, and receiving instructions from the court, they could not agree of a verdict, and were discharged by the court; and the said cause was continued.

Judgment.

And afterwards, to wit, at the April term of said circuit court, in

the year of our Lord one thousand eight hundred and forty, such proceedings were had in said cause, that on the seventeenth day of April, in the year last aforesaid, the said plaintiff recovered a judgment against said defendant for the sum of thirty-one thousand and fifty-six dollars and ninety-three cents; and the said defendant, by his attorneys, during the trial of said cause, filed four several bills of exceptions to the decisions and opinions of the court, and to the instructions given to the jury.

Writ of error—Mandate.

And on the 20th day of April, in the year aforesaid, the defendant sued out his writ of error to the Supreme Court of the United States, wherein such proceedings were afterwards had that, on the fourth day of April, in the year one thousand eight hundred and forty-two, a special mandate from said Supreme Court was filed in the said circuit court, in tenor and form following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit [court] of the United States for the district of Missouri, greeting: [L. S.]

Whereas lately, in the circuit court of the United States for the district of Missouri, before you, or some of you, in a cause between the United States plaintiffs and Charles Gratiot defendant, the judgment of the said circuit court was in the following words, viz: "Therefore it is considered by the court, that the said United States recover against the said Charles Gratiot their damages aforesaid, in form aforesaid by the jury assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to an act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and forty-one, the said cause came on to be heard before the said Supreme Court, on the transcript of the record, and was argued by counsel. On consideration whereof, it is the opinion of this court that there was error in the said circuit court, in rejecting the evidence offered by the defendant (Gratiot) in support of his claims set forth in the first bill of exceptions, and also error in refusing to allow the depositions and documents to be given in evidence, stated in the third bill of exceptions, for the purposes for which the same was offered by the said defendant. It is thereupon now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award

a venire facias de novo. You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

WM. THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

And afterwards, at the April term of said circuit court, in the year one thousand eight hundred and forty, in the record of proceedings are the following entries, to wit:

Motion for bill of particulars of defendant's claim.

THE UNITED STATES vs. CHARLES GRATIOT. } TUESDAY, 5 *April*, 1842.

On motion of Mr. Blair, attorney for said plaintiffs, it is ordered by the court, that the said defendant file a bill of particulars of his claims against said plaintiffs.

Bill of particulars filed.

THE UNITED STATES vs. CHARLES GRATIOT. } MONDAY, 11 *April*, 1842.

Bill of particulars of defendant's claim filed.

Motion to file amended declaration.

THE UNITED STATES vs. CHARLES GRATIOT. } SATURDAY, 16*th April*, 1842.

And now, at this day, come the said United States, by the district attorney, and pray leave of the court to amend their declaration aforesaid by filing a new count, which is granted, and the amendment made accordingly; and thereupon this cause is continued.

Which said additional count to plaintiffs' declaration is in the words and figures following:

In the circuit court of the United States for the Missouri district.

UNITED STATES OF AMERICA vs. CHARLES GRATIOT. } April term, 1842.

And the said plaintiffs, by their attorney for the district of Mis-

souri, by leave of the court here for that purpose first had and obtained, filed the following additional count to their declaration in this cause, to wit:

Amended declaration.

And whereas, also, the said defendant heretofore, to wit, on the first day of January, in the year eighteen hundred and thirty-nine, at Washington city, to wit, at the district aforesaid, was indebted to the said plaintiffs in the further sum of fifty thousand dollars, for so much other money before that time by the said defendant had and received to the use of the said plaintiffs, and being so indebted, the said defendant afterwards, to wit, on the day and year aforesaid, at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised to pay to the said plaintiffs, the said sum of money in this count mentioned, when he, said defendant, should be thereto requested. Nevertheless, the said defendant hath not yet paid to the said plaintiffs the said sum of money, nor any part thereof, although to pay the same the said defendant was requested, to wit, on the day and year last aforesaid, at the district aforesaid, and often afterwards; but to pay the said sum of money, or any part thereof to the said plaintiffs, the said defendant has hitherto altogether neglected and refused—to the damage of the plaintiffs in the sum of one hundred thousand dollars. And therefore they sue.

And afterwards, to wit, on the fourth day of April, at the April term of said circuit court, in the year one thousand eight hundred and forty-three, the said defendant, by his attorneys aforesaid, appeared and filed his pleas to said additional count, in the words following, to wit:

Pleas to amended declaration.—Non assumpsit.

And the said defendant, for plea to the additional count to the declaration in this cause, says, that he did not undertake and promise, in manner and form as *as* the plaintiff, in said additional count, has supposed; and of this he puts himself upon the country.

Set-off.

And for a further plea in this behalf, the said defendant says, the plaintiff ought not to have and maintain the action aforesaid against him, because, he says, that at and before the time of the commencement of this suit, the said plaintiff was, and still is indebted to this defendant in a large sum of money, exceeding the amount claimed in said count by the plaintiff against this defendant, to wit, sixty thousand dollars, for the work and labor, care and diligence, and responsibility of the defendant, by him, before the commencement of this suit, done, and performed, and incurred, in and about the affairs and business of the plaintiff, and at the plaintiff's request; and for performing the duties of agent for forti-

fications at Fortress Monroe and Fort Calhoun, two fortifications belonging to the plaintiff, for a long time, to wit, for ten years; and for disbursing and expending there, in and about the construction of the said two fortifications, large sums of money, to wit, to the amount of three millions of dollars, all which was done and performed by this defendant, for the use and at the request of the plaintiff; and for receiving and disbursing a large sum of money, to wit, one million of dollars, in and about the repairs and contingencies of fortifications of the plaintiff, for the use and at the request of the plaintiff; and also for the work and labor, care, diligence, skill, and responsibility of the defendant, by him, before the commencement of this suit, done, bestowed and incurred, for the use of the plaintiff, and at the request of the plaintiff, in and about the civil works of internal improvements of the said United States, and not pertaining to the ordinary and regular duties of this defendant as chief engineer as aforesaid. All which he is ready to verify. And he is ready and willing, and hereby offers, to set off and allow so much of the money due to him as aforesaid, from the plaintiff, as may suffice to rebate and pay whatever sum may, in in this suit, under the said count, appear to be due from this defendant to the plaintiff; and as to the residue, he prays that the amount thereof may be ascertained, &c. Wherefore he prays judgment, &c.

Special traverse.

And for a further plea in this behalf, as to the said additional count, the said defendant says, that the plaintiff ought not to have and maintain the action against him on that count, because, he says, that he did not, as chief engineer of the United States, receive the money in that count mentioned, nor any part thereof, in manner and form as in the declaration is above supposed. And of this he puts himself upon the country.

Statute limitation.

And for a further plea in this behalf, the said defendant says, that the plaintiff ought not to have and maintain the action aforesaid on the said additional count, because, he says, that the cause of action, in that count mentioned, did not accrue to the plaintiff against this defendant, at any time within five years next before the commencement of this suit. And of this he puts himself upon the country.

And thereupon the said plaintiffs, by their attorney, filed their replications to said pleas as follows, to wit:

Similitar.

And the said plaintiffs, as to the plea of the defendant to the additional count of the said plaintiffs' declaration, by said defendant

firstly above pleaded, and whereof he hath put himself upon the country, doth the like.

Replication to 2d plea.

And the said plaintiffs, as to the second plea of the defendant to said additional count, say that, by reason of any thing in that plea contained, they ought not to be barred from having their aforesaid action, because, they say, that they were not, and are not, indebted to said defendant in the said sum of sixty thousand dollars, or any part thereof, in manner and form as the said defendant hath above in that plea in that behalf alleged; and this the said plaintiffs pray may be inquired of by the country, &c.

Demurrer to 3d and 4th.

And the said plaintiffs, as to the pleas of the defendant to the said additional count, by said defendant thirdly and fourthly above pleaded, saith, that the same, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having and maintaining their aforesaid action, and that they are not bound by law to answer the same. And this they are ready to verify.

And on the day and year last aforesaid, the said defendant, by his attorneys, filed the following prayer for a bill of particulars of plaintiffs' demand:

Motion for bill of particulars of plaintiffs' demand.

The defendant prays the court to cause the plaintiff to furnish him, the defendant, in a reasonable time, with a bill of particulars of the plaintiffs' demand, as contained in the additional count of the declaration. And that said bill of particulars may shew plainly how much money the defendant is charged in that count with having received; when, where, from whom, and on what account he received it; and in what office, agency, or capacity he received it.

And thereupon, on the day of the filing of said prayer, the said plaintiffs, by their attorney, filed the following bill of particulars, viz:

Bill of particulars.—*Bill of particulars filed.*

Charles Gratiot to the U. S., Dr.

1839.—To this amount of money by him had and received for the use of the United States, as chief engineer, and unaccounted for -	$30,000
To this amount of money by him had and received for the use of the plaintiffs, as engineer of the United States, and unaccounted for -	30,000
To this amount of money by him had and received to the use of the plaintiffs, as agent of the United States, and unaccounted for -	30,000

To this amount of money by him had and received to the use of the plaintiffs, and by him unaccounted for - - - - 30,000

$120,000

M. BLAIR, *D. A.*

And afterwards, at the same [term] of the said circuit court, in the year aforesaid, in the record of proceedings, are the following entries, to wit:

Judgment on demurrer.

THE UNITED STATES vs. CHARLES GRATIOT. } Friday, 21st April, 1843.

Now at this day come the parties aforesaid, by their respective attorneys, and thereupon, all and singular the matters, whereof the said parties have put themselves upon the judgment of the court, are by them submitted to the court, which being seen and heard, and by the court here fully understood, and mature deliberation being thereupon had, for that it appears to the court, that the third and fourth pleas of the said defendant, and the matters therein contained, in manner and form as the same are by him pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having and maintaining their aforesaid action against him; and that they, the said plaintiffs, are not bound by the law of the land to answer the same. Therefore it is considered by the court, that the demurrer of the said plaintiffs, to the said third and fourth pleas of said defendant, be sustained.

Trial.—Jury.

THE UNITED STATES vs. CHARLES GRATIOT. } Tuesday, 25th April, 1843.

Now at this day come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit:

Charles Levi,	Woodville Jones,
Daniel M. Tucker,	Benjamin F. Harrison,
John H. Cook,	Robert Bronaugh,
William G. Peltus,	Charles D. Burroughs,
Leonidas L. Allen,	Joel Cruttenden,
Jesse Little,	James Green,

twelve good and lawful men, who were duly elected, tried, and sworn, well and truly to try the issues within joined between the parties aforesaid. And the parties not having closed their evidence, further proceedings in said cause are adjourned until the meeting of the court to-morrow morning.

THE UNITED STATES vs. CHARLES GRATIOT. } Wednesday, 26th April, 1843.

Present the same jury. On motion, and by consent of the parties, and with leave of the court, further proceedings in this cause are postponed until the meeting of the court to-morrow morning.

THE UNITED STATES vs. CHARLES GRATIOT. } Thursday, 27th April, 1843.

Present the same jury. The parties not yet having closed their evidence, further proceedings in said cause are adjourned until the meeting of the court to-morrow morning.

THE UNITED STATES vs. CHARLES GRATIOT. } Friday, 28th April, 1843.

Present the same jury. The arguments of counsel not being concluded, further proceedings in this cause are adjourned until the meeting of the court to-morrow morning.

THE UNITED STATES vs. CHARLES GRATIOT. } Saturday, 29th April, 1843.

Verdict.

Now, at this day, come again the parties aforesaid by their respective attorneys, and thereupon also come again the same jury, who, upon their oath aforesaid, do say, as to the first issue within joined between the parties aforesaid, that the said defendant did undertake and promise in manner and form as the said plaintiffs have, in the first count of their declaration against him, alleged. And as to the second issue within joined between the parties aforesaid, on the first count of said plaintiffs' declaration, the said jurors do say, that the said plaintiffs do not owe to the said defendant the said sum of money, in manner and form as the said plaintiffs have in their replication to defendant's said second plea to said first count alleged. And the said jurors, upon their oath aforesaid, do further say, as to the first issue within joined between the parties aforesaid, upon the additional count to said plaintiffs' declaration, that said defendant did undertake and promise, in manner and form as the said plaintiffs have, in the said additional count of their declaration against him, alleged. And as to the second issue within joined between the parties aforesaid, upon said additional count, the said jurors, upon their oath aforesaid, do say, that the said plaintiffs were not, and are not, indebted to the said defendant, in manner and form as the said plaintiffs have, in their replication to said defendant's said second plea, alleged. And they assess the

damages, by said plaintiff sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned, to the sum of twenty-nine thousand one hundred and twenty-six dollars and ninety-three cents.

Judgment.

Therefore, it is considered by the court here, that the said United States recover against the said Charles Gratiot their damages aforesaid, in form aforesaid by the jury assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution.

Exceptions.

In this case, before the jury retired from the bar to consider of their verdict, the court gave to the jury certain written instructions, eight in number, to the giving of each and every of which the defendant, by his counsel, excepted. And defendant, by his counsel, prayed the court to give certain written instructions to the jury, being five in number, the first of which was given, and the other four were refused, to which refusal of the court to give the instructions prayed for, the defendant, by his counsel, excepted.

And afterwards, at the same term of said circuit court, on the third day of May, in the year aforesaid, the said defendant, by his counsel, filed his bill of exceptions in the words and figures following, to wit:

Bill of exceptions.

Be it remembered, that on the trial of this cause, the plaintiff produced and gave in evidence to the jury two transcripts from the books and proceedings of the Treasury Department, which are the same marked A and B on the record of this case, as the same was formerly before the Supreme Court of the United States, and by consent of parties, the transcripts, as spread upon the record of that court, are to be used and regarded as if spread on this bill of exceptions. The plaintiff also gave in evidence an original account rendered by the defendant to the plaintiff, signed by the defendant, in the words and figures following:

Plaintiff's evidence.—Gen. Gratiot's account.

Dr. The United States in account current with Brig. Gen. Charles Gratiot.

1836.		
April 12	To this sum paid over to Maj. J. L. Smith, on account of fort at Throg's Neck -	$18,000 00
June 28	To this sum paid over to same, on account of Fort at Throg's Neck - - - -	29,956 62
"	To this sum paid over to same, on account of repairs at Fort Columbus and Castle Williams - - - -	3,000 00
Dec. 31	To this amount deposited in the Bank of the Metropolis to the credit of the Treasurer of the United States, on account of the appropriation for a fort at Grand Terre, Louisiana, as per accompanying certificate	15,000 00
	To balance due the U. S. - - -	35,000 00
		$ 100,956 62

Cr.

1835.		
Nov. 27	By Treasury warrant for this amount deposited in the Mechanics' Bank, New York, to my credit on account of the appriation for fort at Grand Terre, Louisiana	$20,000 00
Dec. 21	By ditto do do do	30,000 00
1836.		
Jan. 26	By ditto do, on account of the appropriation for a fort at Throg's Neck, N. Y. -	47,956 62
"	By ditto do, on account of the appropriation for repairs at Fort Columbus and C. Williams - - - - - -	3,000 00
		$ 100,956 62

Dec. 31, by balance due on account of the appropriation for a fort at Grand Terre, Louisiana - - - - $35,000 00

E. E. C. GRATIOT.

Defendant's evidence.

The plaintiffs' case being here closed, the defendant produced his account against the United States, and proved, by a transcript from the books and proceedings of the Treasury Department, that each and every item of his account had been duly presented to the

accounting officers of the Treasury Department for allowance against the United States, and had been by the said officers disallowed; which account is in the words and figures following, to wit:

Report of Auditor on Gen. Gratiot's account.

Report of the 3d Auditor of the Treasury on the accounts and claims of General Charles Gratiot, late chief engineer, transmitted to him by the Solicitor of the Treasury on the 25th March, 1841, for the decision of the accounting officers thereon.

No. 1. For the safe-keeping of, and responsibility for, the following sums placed in the custody of C. Gratiot, from 27th August up to the 7th and 20th September, 1821, the dates of their being turned over to James Maurice, as shewn on the credit side of the Treasury transcript admitted in evidence in the circuit court of Missouri, in the case of the United States vs. Charles Gratiot, during the April term of 1840, this during a period of time that he was not a disbursing agent, viz:

On account of Fort Calhoun - -	$19,500 00
" Fort Monroe - -	26,550 00
Making the aggregate sum of -	$46,050 00

Commission on $46,050, according to usage in like cases, at 2½ per cent. - - $1,151 25

2. For disbursing from the 20th May, 1822, to 30th September, 1829, both inclusive, $84,325 58, on account of the appropriations for fortifications, other than those on forts Monroe and Calhoun, for which a separate and distinct accountability was imposed by law and according to the decision of the Supreme Court of the United States, as also that of the Secretary of War of the 26th May, 1831, in the case of Tuttle, constituted a separate agency. Vide opinion of the Supreme Court of 1841, on the subject and accounts of Tuttle, on file in the 3d Auditor's office, by which latter it is shown, that although (he, Tuttle,) received compensation for the construction or repairs of a fort, he was entitled to and did receive an additional compensation for disbursing, *at the same time and place*, the funds for other and distinct appropriations, and that he also received, *at the same time*, a like compensation for disbursing the funds of each separate appropriation for piers at New Castle and Marcus Hook.

Commission on $84,325 58 at 2½ per cent., as allowed by general regulations of the army, $2,108 14

3. For disbursing $30,531 60, on account of the appropriation for the repairs and contingencies of fortifications from the

1st of November, 1823, to 30th September, 1829, both days included, as shewn by Treasury transcript referred to above, which disbursements were other than those on forts Monroe and Calhoun, it having been the usage of the Department to make the like compensation for disbursements under the like circumstances.

Commissions on $30,531 60, at 2½ per cent., being less than $2 per day, - - - $763 29

4. For disbursing $591,039 00, on account of the appropriations for Fort Calhoun, from the 13th November, 1821, to 30th September, 1829, both days included, 2879 days, at $2 per day, being less than 2½ per cent., as allowed by general regulations of the army.

Account before rendered - - $5,758 00

5. For disbursing $819,677 64, on account of the appropriations for Fort Monroe, from 13th November, 1821, to 30th September, 1829, both days included, 2879 days, at $2 per day, as allowed by general regulations of the army.

Account before rendered - - $5,758 00

6. For collections of money made for the United States from Jacob Lewis & Co., as per accompanying abstract, marked A, which service did not, under the regulations, enter into, or form any part of, the duties of a "disbursing agent."

Commissions on the sums collected, viz: $24,335 81, at 2½ per cent., according to usage in similar cases - - - - $608 39

7. For ditto, ditto, from Samuel Cooper, as per accompanying abstract, marked B.

Commissions on the same collected, viz: $3,233 62, at 2½ per cent. - - - - $80 84

8. For ditto, ditto, for sales of public property, &c., as per accompanying abstract, marked C.

Commissions on sums collected, viz: $16,150 81, at 2½ per cent. - - - - $403 77

9. For 480 barrels cement, account rendered and admitted to his credit in former settlement - - $1,404 00

10. For quarters furnished Lieuts. Dutten and Mordecai, on account of forts Monroe and Calhoun. Accounts heretofore rendered - - - - $40 00

11. For this amount paid to Robert Archer, for medical attendance on persons employed at forts Monroe and Calhoun. Account before rendered - - - $552 00

12. For this amount expended on account of repairs and contingencies of fortifications, $345 59. Account before rendered and passed to the credit of General Gratiot in former settlement.

13. For the following sums withheld by the Treasury officers, viz:

Pay and emoluments from 1st April, 1836, to 6th December, 1838, both days included, -	$10,763 99
Allowance for fuel and quarters for same period	905 80
Transportation of officers' baggage -	618 67
	$12,284 46

14. For certain extra official services as more fully set forth in the accompanying account marked D, viz: for his extra official services in conducting the affairs connected with the civil works of internal improvement carried on by the United States; and in conducting also the affairs connected with the execution of the act of Congress of July 14, 1832, "to provide for the taking of certain observations preparatory to the adjustment of the northern boundary line of the State of Ohio," referred to the Engineer bureau for execution by the executive of the United States, and other extra official services connected with the aforesaid items of charge, and which did not constitute any part of his duties as a military officer, but which properly appertained to the duties and functions of civil engineering, and were performed under an understood or implied contract with the War Department, under the sanction and authority of the President of the United States, to be compensated therefor, over and above my official pay and emoluments, at a reasonable rate of compensation, according to the established usage of the Department in analogous cases, from the 30th day of July, 1828, to 6th December, 1838, both days included, 10 years and 130 days, at $3,600 per annum, that being the pay granted to John S. Sullivan, David Shriver, James Geddes, and Nathan S. Roberts, esqrs., civil engineers employed under the act of 30th April, 1824, entitled an act to procure the necessary surveys, plans, and estimates upon the subject of roads and canals, and less than the extra pay of Captain Andrew Talcott, of the Corps of Engineers while he was employed under the orders of the Engineer bureau, in executing the act of the 14 July, 1832, above referred to - $37,282 19

15. For certain extra official services specified in the items of charge contained in accompanying account marked E, none of which services constituted any part or parcel of the duties or services appertaining to the office or functions of any engineer, civil or military, nor of the proper business of civil or military engineering, nor of any of the legal or prescribed duties or functions of my office of chief engineer, or Colo. of engineers, nor in any manner included in my official compensation as chief engineer, Colonel of engineers, or brigade general by brevet, in the army of

the United States; but all of which services were extra official in relation to each and every of my said official capacities, and were performed under an understood or implied contract with the War Department, under the sanction and authority of the President of the United States, to be compensated therefor over and above my official pay and emoluments at a reasonable rate of compensation, according to the established usage of the Department in analogous cases. For the specification of all which services, I refer to the items in my said account E, all of which I am prepared to show, and prove, were in fact such extra official services, and entitled me, under such understood or implied contract, to such reasonable compensation over and above my official pay and emoluments as aforesaid, viz:

The United States to Charles Gratiot, DR.

Items.

No. 1. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to 6 December, 1838, both days included, 10 years and 130 days, in receiving, acting on, and causing to be filed for safe keeping in the archives of said desk or bureau, 23,408 letters and other papers, (not accounts) 10 years and 130 days.

2. For his entire official services at one of the desks or bureaux of the War Department, from 30th July, 1828, to 6th December, 1838, both days included, responding to the letters or other communications addressed to, or referred by, the Secretary of War to said desk on business pertaining properly to the administrative branch of the War Department, which responses have in the aggregate filled 10,003 pages of folio post record, 10 years and 130 days.

3. For ditto, ditto, ditto, during the same period of time as the preceding, in examining and causing to be filed, and preservation of the returns of property received from the agents acting under the orders of said desk or bureau, say about 100 agents in number on an average, 10 years and 130 days.

4. For ditto, ditto, ditto, during the same period as the preceding, in examining the estimates for funds yearly, quarterly and monthly, from the disbursing agents in correspondence with said desk or bureau, about 100 agents on an average; making requisitions on the Secretary of War, for the funds to be remitted to said agents, by the Treasury Department; directing the mode of applying and accounting for the funds so remitted; keeping the account with the Treasury for such remittances; examining the vouchers rendered by the said disbursing agents in reference to price and appli-

cation of the articles and labor paid for, and finally transmitting the said accounts to the auditor for settlement, 10 years and 130 days.

NOTE.—The amount disbursed by said agents, and accounted for to the Treasury during the time specified, was—

For fortifications - - -	$7,899,571 75
" internal improvement - -	10,242,425 42
" light-houses and beacons - -	91,842 77
" military academy - - -	344,411 75
" lithographic piers - - -	2,057 20
" N. W. Executive building - -	3,120 59
" northern boundary of Ohio -	25,674 63
	$18,609,104 11

5. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to 6th December, 1838, both days included, in making weekly reports to the Secretary of War of the proceedings in said bureau in relation to each letter or other paper referred from him, or written by direction of the War Department, 10 years and 130 days, per ann.
6. For ditto, ditto, ditto, in causing all letters and other papers prepared at said desk or bureau to be recorded in books procured for that purpose. Term of service 30th July, 1828, to 6 December, 1838, both days included, 10 years and 130 days.
7. For his extra official services at one of the desks or bureaux of the War Department, from 30th July, 1828, to 6th December, 1838, both days included, in examination and approval, or return to the agent or party to the contract; for correction or alteration of all contracts appertaining to works to be executed under the direction of the said desk or bureau, and their (the contract) subsequent transmission to the second comptroller of the Treasury for file, 10 years and 130 days.
8. For his extra official services at one of the desks or bureaux of the War Department, from 30th July, 1828, to 6th December, 1838, both days included, in examination of, and reporting upon, all doubtful or disputed claims under contracts executed under the supervision of said desk or bureau; and in making special reports on cases of claims referred to the War Department, by resolution of either branch of National legislature, or in reply to calls from committees, or individual members of Congress, governors of States and Secretary of War, on application made to Secretary of War, or directly to said desk or bureau, or in

obedience to legislative enactment—of these the following may be cited in part, viz:

I. Report in obedience to the Senate resolution of 2d January, 1829, on the claims of Hopkins.

II. Report to the Secretary of War, 28th January, 1829, on the claim of Diggs for land near Fort Washington.

III. Report of the Secretary of War made in answer to House resolution of 26th January, 1830, on the current business of the desk or bureau.

IV. Report on the investigation of the claims of contractors on the Cumberland road in the State of Ohio—submitted to Congress by the Secretary of War, and reported upon by the Committee on Claims of the House of Representatives. Vide documents No. 449, 455 and 456, 1 Ses. 23d Congress.

V. Report on the adjudication of the claims of the legal representatives of N. Farrow and R. Harris, contractors, in fulfilment of the act of 14th July, 1832, on the subject. Vide doc. No. 78, of the House of Representatives, 2d Session, 23d Congress. And record book I, of the desk or bureau conducted by claimant, page 12, showing in the letter addressed to the 2d comptroller and 3d auditor, that the data on which the reports of the majority and minority of the commission were founded, as to quantity of work executed and remaining to be done, was prepared and furnished by said claimant, who in the act is designated by his individual name, whilst the two others are referred to in their official characters.

VI. Report of the 26 January, 1834, to the Secretary of War on claims of Sinnard, contractor.

VII. Report of the 3d February, 1834, to the chairman of Com. on Claims, of the H. of Reps., on the claims of J. Carr.

VIII. Report of the 12th of February, 1834, to chair. Com. on Claims, of the H. of Reps. on the claims of Monaghan; and 13th, on those of Artimas Baker.

IX. Report of the 4th April, 1834, to ditto, on the claims of Ivory and Taft.

X. Report of the 29th April, 1834, to ditto, on the claims of McCallester and Corwyn.

XI. Report of the 20th February, 1834, to the Secretary of War, on the claims of Ewing, Barbour and Brown.

XII. Report of the 20th February, 1834, to the chairman Com. on Claims of the Ho. of Reps. on claims of Corwyn and Taggart.

XIII. Report of the 9th April, 1834, to the Secretary of War, on the claims of John Jones and Charles Souder.

XIV. Report of the 10th April, 1834, to chair. Com. on Claims, Ho. of Reps., on the claims of Kincaid.

XV. Report 1st May, 1834, to do. on the claims of Balintine, McMahon and others.

XVI. Report of the 21st Jan. 1835, to the Secretary of War, on the claims of L. Wernwag & Co.

XVII. Report of the 12th Feb. 1835, to do. on the claims of B. Long.

XVIII. Report of the 13th February, 1835, to the Hon. R. McIntyre, of the Ho. of Reps. and members of the Com. on Claims; on the claims of Wilcox and others.

XIX. Report of the 17th February, 1835, to the Secretary of War, on the claims of Charles McKinney.

XX. Report of the 19th February, 1835, to the Secretary of War, on the claims of John Smyth.

XXI. Report of the 22d December, 1836, to the Secretary of War, on the claims of Peter Earley.

XXII. Report of the 13th August, 1837, to the Solicitor of the Treasury, in relation to the investigation of the charges preferred against Captain Shreve, conducted by the district attorney of Kentucky, on whose claims for compensation the report refers.—10 years and 130 days.

9. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to 6th December, 1838, both days included, in causing to be registered, in appropriate books of record procured for the purpose, the letters and all other papers relating to the current business of said desk or bureau; to accountability generally, and to other matters, &c.—10 years and 130 days.

10. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to 6th December, 1838, both days included, in making quarter yearly reports to the proper accounting officer of the Treasury, of the agents connected with said desk or bureau, who had rendered their accounts, and of those who had failed to do so.—10 years and 130 days.

11. For his extra official services at one of the desks or bureaux of the War Department, from 30th July, 1828, to 6th December, 1838, both days included, in carrying on the correspondence in relation to the military academy, and forwarding to parents and guardians of the cadets, circulars, numbering monthly on an average 338 communications, inclusive of the correspondence of the desks or bureaux, before charged item 2.—10 years and 130 days.

12. For his extra official services at one of the desks or bureaux of the War Department, from 25th November, 1832, to 30th June, 1835, both days included, in causing to be executed, by executive order, the provision of the act of 14th July, 1832, entitled "An act to provide for the tak-

ing of certain observations preparatory to the adjustment of the northern boundary of the State of Ohio."—948 days, or 2 years and 218 days.

For all which extra official services, I charge in the aggregate - - - - - - - $37,127 42

PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,
Third Auditor's Office, April 5, 1841.

To ALBION K. PARRIS, esq.,
Second Comptroller of the Treasury.

TREASURY DEPARTMENT,
Second Comptroller's Office, 19 *April*, 1841.

I have examined the several claims of General Charles Gratiot against the United States, as particularly set forth and described in the foregoing report, together with all the evidence, and am of opinion that the said claims are not admissible against the Treasury.

ALBION K. PARRIS, *Comptroller.*

Deposition of Benjamin Fowler.

The defendant then gave in evidence a deposition of Benjamin Fowler, with an account thereto annexed, which deposition and account are in the words and figures following, to wit:

UNITED STATES }
vs. }
GRATIOT. }

Interrogatories propounded to Benjamin Fowler, clerk in the engineer department, by the defendant.

Interrogatory 1st. What office do you fill, and how long have you filled the same?

Answer. I was appointed a clerk in the engineer department in July, eighteen hundred and twenty-three, and chief clerk in September, eighteen hundred and twenty-seven (1827); and continued as such to this time.

Interrogatory 2d. Examine the records, books, and other documents belonging to, and now on file, or otherwise, in the engineer department, and state therefrom, as nearly as you can, or from your knowledge of the facts, whether the services charged by Charles Gratiot, in his account hereto appended, have been performed by the said Gratiot?

Answer. It appears from the records of the engineer department, examined as required by this interrogatory, that—

As to item No. 1 of the account appended, the number of letters there stated is as nearly correct as could be ascertained.

As to item No. 2, the number of pages of folio post record is correct.

As to item No. 3, the average number of agents stated therein is correct.

As to item No. 4, the duties therein charged were performed.

As to item No. 5, the service therein stated was performed.

As to item No. 6, the books and records were kept as stated.

As to item No. 7, this service was duly performed.

As to item No. 8, the service therein stated, and the reports made, numbered from 1 to 22 inclusive, are correct, as appears from the records of the department.

As to item No. 9, the books and records therein referred to were duly kept.

As to item No. 10, these reports and returns were duly made.

As to item No. 11, the part of the files of the department referred to in this item, being particularly in charge of another clerk, and only partly included in items 1 and 2, will be answered by him.

As to item No. 12, the service therein charged is correct, as appears from the records of the department.

Interrogatory 3d. State from your knowledge of the facts, whether the office styled engineer department was not, from the year 1828 to 1829, as also from the routine of practice in it, one of the bureaux of *record*, *file*, and *correspondence* of the Department of War?

Answer. I always understood, from my appointment of clerk in 1823, to the present time, that the office styled the engineer department was a bureau of the Department of War; I have so considered it, and have no recollection of ever hearing a different view expressed by any one. It has been the practice during the period stated in the interrogatory, as well as before and since, during my clerkship in the engineer department, for letters, memorials, petitions, and other papers connected with objects under the direction of the engineer department, and addressed to the Secretary of War, to be referred to the engineer department, to be replied to directly from the engineer department, or reported on to the Secretary of War for his action; and that such papers, so referred, were filed in the engineer department, and the action thereon there filed or recorded.

Interrogatory 4th. Examine the records of the engineer department, and state therefrom, what was the number of disbursing agents whose accounts passed through, and were examined in conformity to regulations in said department, from the 30th July, 1828, to the 6th of December, 1838, specifying the number of individuals disbursing on account of the appropriations for fortifications; surveys under the act of 30th of April, 1824; internal improvements; light-houses and beacons; military academy; lithographic press; N. W. executive building; and northern boundary of Ohio; specifying, also, the number of separate and distinct sets of accounts or accountability, which were opened and kept in the engineer department within the period stated above.

Answer. It appears from the records of the engineer department, that there was employed within the time stated in the interrogatory, as nearly as I can ascertain, two hundred and five disbursing agents, whose disbursements involved the keeping of three hundred and seventy-nine separate and distinct accounts, viz:

Fortifications -	- 51	individuals,	110	sets of accounts.
Surveys under the act of 30th April, 1824 -	- 19	do	19	"
Internal improvements	- 118	do	229	"
Light-houses and beacons	- 10	do	14	"
Military academy -	- 2	do	2	"
Lithographic press -	- 2	do	2	"
N. W. executive building	- 1	do	1	"
Northern boundary of Ohio	- 2	do	2	"
Total	- 205	do	& 379	sets of accounts.

These accounts passed through the engineer department, were there examined according to regulations, and thence transmitted to the proper auditor of the Treasury for settlement. To avoid ambiguity or misunderstanding, I will further state, that some of the above "sets of accounts" were continued from quarter to quarter during the whole period, whilst others, according to the continuance of the agency, may have been for one or more quarters.

BENJ. FOWLER.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Additional interrogatory on the part of the defendant to Col. Ben. Fowler, chief clerk, engineer department.

5. Examine the records and files of the engineer department, and state therefrom, as nearly as you can, what were the affairs or business committed to the engineer department for the year 1822, classed in the manner stated in your answer to defendant's second interrogatory, shewing the extent or quantity under each head of service stated in the account appended to the said 2d interrogatory.

Answer. It appears from the records of the engineer department, examined as required by this interrogatory, that during the year 1822, there were received, acted on, and filed for safe keeping in said department, 652 letters and other papers. That the number of folio post record occupied with letters, reports, and other communications from the engineer department is 288 pages. The number of agents of the department making quarter yearly returns of public property, which were to be examined and preserved in the department, was 11; and the number of agents, whose accounts

rendered quarterly, were to be examined and transmitted to the accounting officer of the Treasury, was 32. All letters, reports, or other papers prepared in the department, were recorded in books kept for that purpose. Contracts made by agents of the department with individuals, in relation to works under its charge, were examined and approved previous to transmission to the Comptroller's office. Requisitions for funds to be remitted to disbursing agents on their estimates, approved, were made, and accounts kept with them in the office.

BENJ. FOWLER.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [L. S.]

Gen. Gratiot's account appended to Fowler's deposition.

The United States to Charles Gratiot, DR.

Item 1. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, 10 years and 130 days, in receiving, acting on, and causing to be filed for safe keeping in the archives of said desk or bureau, 23,408 letters and other papers, not accounts.

2. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, responding to the letters or other communications addressed to, or referred by the Secretary of War to the said desk or bureau, on business pertaining properly to the administrative branch of the War Department, which responses have, in the aggregate, filled 11,003 pages of folio post record, 10 years and 130 days.

3. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in examining and causing to be filed, and preservation, the returns of property received from the agents acting under the orders of said desk or bureau, say about 100 agents in number on an average, 10 years and 130 days.

4. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in examining the estimates for funds (yearly, quarterly and monthly) from the disbursing agents in correspondence with said desk or bureau, about 100 agents on an average; making requisitions on the Secretary of War for the funds to be remitted to said agents by the Treasury Department; di-

recting the mode of applying and accounting for the funds remitted; keeping the account with the Treasury for such remittances; examining the vouchers rendered by the said disbursing agents in reference to price and application of the articles and labor paid for; and finally transmitting the said accounts to the auditor for settlement, 10 years, 130 days.

Note.—The amount disbursed by said agents, and accounted for to the Treasury during the time specified, was—

For fortifications - - -	$7,899,571 75
Internal improvements - -	10,242,425 42
Light houses and beacons -	91,842 77
Military academy - -	344,411 75
Lithographic press - -	2,057 20
N. W. executive building -	3,120 59
Northern boundary of Ohio -	25,674 63
	$18,609,104 11

5. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in making weekly reports to the Secretary of War on the proceedings in said bureau in relation to each letter or other paper referred from or written by direction of the War Department, 10 years and 130 days.
6. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in causing all letters and other papers prepared at said desk or bureau to be recorded in books procured for the purpose, 10 years and 130 days.
7. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in examination of, and approval, or return to the agent or party to the contract, for correction or alteration of all contracts appertaining to works to be executed under the direction of the said desk or bureau, and their (the contracts) subsequent transmission to the 2d Comptroller of the Treasury for file, 10 years and 130 days.
8. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in examination of, and reporting upon, all doubtful or disputed claims, under contracts executed under the supervision of said desk or bureau; and in making special reports on cases

of claims referred to the War Department by resolution of either branch of the National Legislature, or in reply to calls from committees or individual members of Congress, Governors of States, and Secretary of War, or applications made to the Secretary of War, or directed to said desk or bureau, or in obedience to legislative enactment. Of these the following may be cited in part, viz:

1. Report in obedience to Senate resolution of 2d January, 1829, on the claims of Hopkins.
2. Do. to the Secretary of War, 28th January, 1829, on the claims of Diggs for land near Fort Washington.
3. Do. to do., made in answer to H. resolution of the 26th January, 1833, on the current business of the desk or bureau.
4. Do., on the investigation of the claims of contractors on the Cumberland road in the State of Ohio, submitted to Congress by the Secretary of War, and reported upon by the committee on claims of the H. R. Vide doc. 449, 455, and 456, 1 sess., 23d Congress.
5. Do. on the adjudication of the claims of the legal representatives of N. Farrow and R. Harris, contractors, in fulfilment of the act of the 14th July, 1832, on the subject. Vide doc. 78, H. R. 2 sess., 23d Congress, and record book I, of the desk or bureau conducted by claimant, page 12 —showing in the letter addressed to the 2d Comptroller and 3d Auditor, that the data on which the report of the majority and minority of the commission was founded as to the quantity of work executed and remaining to be done, was prepared and furnished by said claimant, who in the act is designated by his individual name, while the two others are referred to in their official characters.
6. Do. 20th January, 1834, to the Secretary of War on the claims of Sinnard, contractor.
7. Do. 3d February, 1834, to chairman com. claims H. R., on the claims of J. Carr.
8. Do. 12th February, 1834, to do., on the claims of Monaghan, and on the 13th on those of A. Baker.
9. Do. 4th April, 1834, to do. do. on the claims of Ivory & Taft.
10. Do. 29th April, 1834, to do. do. on the claims of McCallister and Corwyn.
11. Do. 20th February, 1834, to Secretary of War on the claims of Ewing, Baker and Brown.
12. Do. 20th February, 1834, to chairman com. claims H. R., on the claims of Corwyn and Taggart.
13. Do. 9th April, 1834, to Secretary of War, on the claims of Jno. Jones and Chs. Souder.
14. Do. 10th April, 1834, to chairman com. claims H. R., on the claims of Kincaid.
15. Do. 1st May, 1834, to do. do. on the claims of Balantine, McMahon and others.

16. Do. 21 January, 1835, to Secretary of War on claims of L. Wernwag & Co.
17. Do. 12th February, 1835, to do. do. on the claims of B. Long.
18. Do. 13th do., do., to Hon. R. McIntyre, of the H. R., and member com. on claims, on claims of Wilcox and others.
19. Do 17th do., do., to the Secretary of War, on the claims of Charles McKinney.
20. Do. 19 do, do., to do. do., on the claims of Jno. Smith.
21. Do 22d December, 1836, to do. do., on the claims of Peter Early.
22. Report 18th August, 1837, to the solicitor of the Treasury, in relation to an investigation of the charges preferred against Capt. Shreve, conducted by the district attorney of Kentucky, on whose claim for compensation the report referred.—10 years and 130 days.

Item 9. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in causing to be registered in appropriate books of record procured for that purpose, the letters and other papers relating to the current business of said desk or bureau, to accountability generally, and to other matters, &c., 10 years and 130 days.

10. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to 6th December, 1838, both days included, in making quarter yearly reports, to the proper accounting officer of the Treasury, of the agents connected with the said desk or bureau, who had rendered their accounts, and of those who had failed to do so, 10 years and 130 days.
11. For his extra official services at one of the desks or bureaux of the War Department, from the 30th July, 1828, to the 6th December, 1838, both days included, in carrying on the correspondence in relation to the military academy, and forwarding to the parents and guardians of the cadets, circulars, numbering monthly on an average 338 communications, exclusive of the correspondence of the desk or bureau before charged in item 2, 10 years and 130 days.
12. For his extra official services at one of the desks or bureaux of the War Department, from the 25th November, 1832, to the 30th June, 1835, both days included, in causing to be executed, by executive order, the provisions of the act of the 14th July, 1832, entitled "an act to provide for the taking of certain observations preparatory to the adjustment of the northern boundary of the State of Ohio, 948 days, or 2 years and 218 days.

For all which extra official services, I charge in the aggregate - - - - - - $37,127 42

C. GRATIOT.

WASHINGTON, D. C., *March* 23*d*, 1844.

Gen. Swift's deposition.

The defendant next gave in evidence, a deposition of Gen. J. G. Swift, with an account thereto annexed, which account is the same as that annexed to the deposition of Benjamin Fowler, and is therefore not here repeated.

Interrogatories propounded by defendant to Gen. J. G. Swift.

Int. 1. What offices or stations have you filled in the service of the United States; how long have you filled the same? State also what is your profession at this time, and how long you have followed the same.

Int. 2. State what was or has been the usage of the Government in reference to extra compensation to officers of the corps of engineers, when on detached service. Cite cases which have come to your knowledge.

Int. 3. State, as far you can, what compensation you received over and above your ordinary pay and emoluments, when put on detached service, and state also the rank you held in the corps of engineers, when you were put on said detached service.

Int. 4. Look at the account of Charles Gratiot hereto appended, and state whether the business or service therein charged, belongs to "civil engineering or military engineering," or to either.

Answer to the interrogatories put to Gen. J. G. Swift, upon the 1st page of this sheet.

To the first interrogatory I answer: That I have been an officer of the U. S. corps of engineers from the year 1802 to the year 1818, and colonel and chief engineer from July, 1812, to Nov., 1818. I am now a civil engineer, and have been such from the year 1827.

To the second interrogatory I answer: That the usage of the U. S. Government has been to compensate officers of engineers, over and above their pay and emoluments for services. In my own case, and in the cases of Colonel William MacRee and Col. Thayer.

To the third interrogatory I answer: That in the year 1815, 1816 and 1817, Col. Wm. MacRee and Major Sylvanus Thayer, were sent to Europe (in the U. S. frigate Congress,) to collect books and examine the public works, and that they received compensation for said services over and above their pay and emoluments as officers of engineers. That while I was chief engineer, I was detached in the winter of 1814, 1815, to act as a member of a board in Baltimore to form a system of infantry tactics, and received extra compensation for that service. That I was, in 1817 and 1818, detailed as member of the board of engineers, and received for that service four dollars per day over and above my pay and emoluments as chief engineer. That I was, in the spring of 1817, ordered by President Monroe to perform the functions of agent of the U. S. in assisting to plan repairs of the Capitol at Washington, and in directing the marble works of the U. S. Senate chamber, that was executed in the city of New York; and that I did perform the said ser-

vice, and that I received from the U. S. Capitol fund compensation for the same, amounting to dolls. 1,368 03 over and above my pay and emoluments as chief engineer.

To the fourth interrogatory I answer: That I have looked over the account hereto attached, amounting to $37,127 42, and that the business or functions therein charged do not pertain to the functions of a civil engineer, nor do they pertain to the functions of a military engineer. J. G. SWIFT.

STATE OF NEW YORK, *Ontario county, ss:*

Personally appeared before me the above named Joseph G. Swift, of Geneva, in Ontario county, and State of New York, and made oath on the Holy Evangelist of Almighty God, that the answers to each and every of the foregoing interrogatories for the defendants, and on the part of the United States, are true, and in all respects correct to the best of his knowledge and belief.

Witness my hand and seal this twenty-third day of February, one thousand eight hundred and forty-two.

ROBERT W. STODDARD, [L. S.]
A justice of the Peace in and for the county of Ontario, and State of New York.

Interrogatories on the part of the United States to Gen. Swift.

Plaintiff's interrogatories.

1. In answer to the defendant's third interrogatory, you say that, in the years 1815, 1816 and 1817, Col. McRee and Major Thayer were sent to Europe, and that they received compensation for the services performed by them over and above their pay and emoluments as officers of engineers. Be pleased to state whether the compensation paid them was for services rendered, or as an equivalent for, or to defray their actual and extraordinary expenses in Europe, and whether the compensation was granted in the shape of a per diem allowance, and if otherwise, in what shape.

2. In answer to defendants third interrogatory you also say, that while you were chief engineer, you were detached in the winter of 1814 and 1815, as a member of a board in Baltimore to form a system of infantry tactics, and received extra compensation for that service. Be pleased to state the reason and grounds of such allowance, and whether you being on "detached" duty, it had any connection with, or relation to, your other official station.

3. You further say, that in 1817 and 1818, you were detailed as a member of the board of engineers, and received for that service four dollars a day, over and above your official pay and emoluments as chief engineer. State whether that allowance was not granted to you as an equivalent for, or in lieu of, commutation of other allowances—for instance, fuel, quarters, transportation, &c., which, under the regulations of the army, you were entitled to draw or receive in kind.

4. You further say, that in the spring of 1817, you were ordered

by President Monroe to perform certain services in relation to the Capitol, and that you received from the U. S. Capitol fund compensation for the same, amounting to $1,368 $\frac{3}{100}$, over and above your official pay and emoluments as chief engineer. Be pleased to state the nature of that compensation; whether it was in the shape of a per diem, or how; and upon what authority; and whether at the time of your receiving it you were an officer of the corps of engineers.

Gen. J. G. Swift replies as follows to the foregoing interrogatories:

To the first interrogatory I reply: That the compensation made by the U. S. to Col. McRee and Major Thayer, which I denominated extra, was a compensation not provided for by law, and was also over and above the compensation provided for by law for their grades, and was therefore an extra pay. No doubt their extra pays were to enable the officers to meet their own expenses and other outlays in their voyage to, and travels in, Europe. Whether they received compensation for travelling expenses also, I do not know.

To the second interrogatory I reply: That detached duty in its ordinary sense does not imply separate from official duty; it implies many things, among other things, the doing duty other than those at head or other quarters, as well also as doing duty not nominally pertaining to the corps to which the officer may belong. The reason why I received compensation therefor, other than my ordinary pay, was that I performed a function not ordinarily required of engineers.

To the third interrogatory I reply: That the four dollars a day was ordinarily a substitute, or equivalent, for fuel, quarters, and transportation; but in my case it was not so, because I had quarters and fuel in addition thereto.

To the fourth interrogatory I reply: That the sum of $1,368 03 was received over and above my compensation as chief engineer, and was received as a part of an advance to me while I was chief engineer, though the account was ultimately liquidated after I left the corps. This compensation was called a per centage, because there was no other form of compensation, for services such as I then performed, then in use in the department of Public Buildings; and was both for disbursement of moneys, and for other services done by me while an officer of engineers.

J. G. SWIFT.

STATE OF NEW YORK, *Ontario county, ss:*

Personally appeared before me, the subscriber, a justice of the peace of the said county of Ontario, and State of New York, the above named Joseph G. Swift, and made oath on the holy evangelist of Almighty God, that the answers to each and every of the foregoing interrogatories for the defendant, and on the part of the United States, are true, and in all respects correct, to the best of his knowledge and belief.

Witness my hand and seal, this twenty-third day of February, one thousand eight hundred and forty-two.

ROBERT W. STODDARD, [L. S.]
A justice of the peace for the county of Ontario & State of N. Y.

STATE OF NEW YORK,
Ontario county, clerk's office, ss:

I, Thomas Hall, clerk of said county, do hereby certify that Robert W. Stoddard, esq., is a justice of the peace in the [L. S.] town of Seneca, in and for the county of Ontario, duly elected and qualified, and authorized to act as such.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of said county, this 24th day of Feb'y, A. D. 1842.

THOMAS HALL, *Clerk.*

The defendant next gave in evidence to the jury, the deposition of Major William Gibbs Mc*Mc*Neill, with an account thereto annexed, which is the same as that annexed to the deposition of Benjamin Fowler, and is therefore not again inserted; the said deposition is in the following words:

Major McNeill's deposition.

Interrogatories propounded to Major W. Gibbs McNeill, on the part of the defendant.

Interrogatory 1. State what public office or station you have filled; how long have you filled the same; what is your present profession; and how long have you followed the same?

Answer 1st. Since the year 1814 I have been in the army of the United States; for the last four years exclusively occupied as a civil engineer, which is my present profession.

Int. 2. What compensation was made to you by the United States, over and above your ordinary pay and emoluments as an officer of the army, when put on extra duty or service? State also the character of the service paid for, specifying the time as nearly as you can.

Answer 2. I have for years, whilst an officer of the army, received extra compensation when put on extraordinary duty or service. I received from one dollar and a quarter to two dollars and a half a day, for several years; the character of the service—surveying and reconnoitering—with reference to roads and canals.

Int. 3. Look at the account of Charles Gratiot, hereto annexed or appended, and state whether the services therein charged belong to "civil engineering or military engineering," or to either.

Ans. 3. I should say that they would be classed under neither. They do not belong to the duties of the engineer, either civil or military.

Int. 4. State, as far as you can, what has been the ordinary compensation of civil engineers, employed by States or companies in the United States, either as superintendents of the work, or as consulting engineers.

Ans. 4. The ordinary compensation has been from $5,000 to $10,000 a year; and in some cases they have been paid, under extraordinary circumstances, from $20 to $30,000 a year. In no case have I been paid less than $5,000, and frequently, in the aggregate, the compensation has amounted to $20,000 per annum.

Int. 5. State whether the bureau services, of the character charged in the account referred to in the 3d interrogatory of the defendant, are required of the engineer employed by States or companies in the United States on works of internal improvement, or whether said services are not performed by a board of administration, or by some other person or persons specially employed for the purpose, who is or are compensated therefor, and not by the engineer; state what is your knowledge of the practice on the subject.

Answer 5. So far from such duties being required of the engineer, it is only by special agreement that he discharges them. They are as I conceive the duties of rather what is called an "agent," and I believe are very seldom discharged by the engineer. I cannot now bring to mind any case wherein I know the duties of engineer *and* agent to have been officially discharged by the same individual, except in my own person, and that a special agreement.

WM. GIBBS McNEILL.

Interrogatories on the part of the U. S. to Maj. W. Gibbs McNeill.

Plaintiff's interrogatories.

1. Be pleased to state to what corps of the army you belonged at the time the services were rendered for which, in your answer to the defendant's 2d interrogatory, you received extra compensation; whether such extra compensation was not an equivalent for, and in lieu of, all other allowances which you were entitled to receive in kind, and which were granted to officers of your corps by law or regulation. State, also, whether surveying and reconnoitering, with reference to roads and canals, was not the appropriate duties of your corps.

2. Were you not, while an officer of the corps of engineers, called on to perform duties connected with works of internal improvement; and if so, did you consider such duties as coming legitimately within the line and scope of your duties as an officer of engineers; did you charge or receive, or do you expect to receive, any other compensation than that allowed in the army regulations to officers of your grade for such services?

3. Have you not claims for a per diem or commission on disbursements made by you while an officer of the army, and which were not allowed to you on the settlement of your accounts at the Treasury; if so, do you not expect that a favorable decision for the defendant in this case, will or may operate as an authority for the admission of your claims?

4. Be pleased to state what have been your opportunities of becoming acquainted with the practice of States or companies, referred to in the defendant's fifth interrogatory; what particular bureau services you have known to be performed on works of internal improvement, undertaken by such State or company; whether the engineer employed on any such work held any official relation to such State or company, other than such employment; and if so, what such other official relation was, to what extent, in what manner were the services under it compensated, and whether such compensation was exclusive, or otherwise, of the compensation for services peculiar to the work. Be particular in specifying the States or companies, works, services connected with the works, and services not connected with them, if any, for which compensation was made.

Answer to 1st interrogatory on the part of the U. S. I belonged to the corps of topographical engineers. The extra compensation of two dollars and half pe: day was not an equivalent, or intended to be so, "for and in lieu of all other allowances" to me. Surveys and reconnoitering, with reference to roads and canals, I certainly conceive to be appropriate to the corps of topographical engineers.

Answer to the 2d. I was ordered frequently to co-operate with private companies "to perform duties connected with works of internal improvements," for which service it was perfectly understood and *sanctioned* by the Government that I was compensated by those companies.

Answer to the 3d. No.

Answer to the 4th. My opportunities have been active service, notoriously known, from 1824 to the present time, in a number of the States of the Union; for instance, as the chief engineer of works in N. York, New Jersey, Massachusetts, Rhode Island, Connecticut, Maryland, N. Carolina, South Carolina, Tennessee, and Kentucky. In reply to the remainder of the inquiry, I refer to my answer to 5th interrogatory of defendant.

WM. GIBBS McNEILL.

DISTRICT OF COLUMBIA, *Washington county:*

Personally appeared before me, one of the justices of the peace in and for said county, Wm. Gibbs McNeill, of North Carolina, now of New York, and made oath on the holy evangelists of Almighty God, that the answers to each and all of the foregoing interrogatories, both of defendant and on the part of the United States, are true and in all respects correct to the best of his knowledge and belief. As witness my hand and seal, this twenty-ninth day of January, in the year of our Lord 1842.

SAMUEL DRURY, *J. P.* [SEAL.]

Additional interrogatories on the part of the United States to Major McNeill.

Plaintiff's additional interrogatories.

5. In answering the first interrogatory on the part of the United States, you say—"the extra compensation of $2 50 per day was not an equivalent, or intended to be so, for [or] in lieu of all other allowances to me." The clause of the interrogatory to which you here respond appears to be in the following words: "Whether such extra compensation was not an equivalent for, and in lieu of, *all* other allowances" which "you were entitled to receive in kind, and which were granted to officers of your corps by law or regulation." This clause of the interrogatory should have been, and was intended to be, as follows: "Whether such extra compensation was not an equivalent for, and in lieu of, other allowances which you were entitled to receive in kind, and which were granted to officers of your corps by law or regulation." These allowances referred to transportation, fuel and quarters. You are now requested to state the particular case or cases in which, and the time when, such allowance was made to you, and on what duty you were then engaged.

6. In your answer to the 2d interrogatory on the part of the United States you state, that you were ordered frequently to co-operate with private companies, &c. The interrogatory had reference to works only in which the U. S. were engaged. Be pleased to answer the 2d interrogatory again, confining the answer to such works.

7. Your answer to the 4th interrogatory does not give the desired information. Be pleased to answer more fully and particularly as to the various points presented by that interrogatory.

Answers to "additional interrogatories on the part of the United States to Major McNeill," in the case U. S. vs. Gratiot.

Answer 5. As in putting this interrogatory an explanation is gone into of the meaning and extent of the 1st interrogatory on the part of the United States, it affords me the opportunity to give as it were the history of the circumstances under which the allowance of $2 50 per day was made and continued to me for several years. I would premise, that strictly speaking I do not consider that any per diem which I have ever received from the U. S., whether of $1 25 or $2 50, can in my opinion be termed "extra compensation," and in so designating it, it was thro' inadvertence, resulting from the fact, that ordinarily such allowances in common parlance have been termed "*extra*," although they were specially "*in lieu of*" other allowances; and yet, in the detail of circumstances above alluded to, it may be questioned if the allowance of $2 50 per day were not somewhat "*extra*," inasmuch as it provided for "*forage*," which was not by law among the allowances of a captain, or assistant topographical engineer, the rank then held by me.

4. Be pleased to state what have been your opportunities of becoming acquainted with the practice of States or companies, referred to in the defendant's fifth interrogatory; what particular bureau services you have known to be performed on works of internal improvement, undertaken by such State or company; whether the engineer employed on any such work held any official relation to such State or company, other than such employment; and if so, what such other official relation was, to what extent, in what manner were the services under it compensated, and whether such compensation was exclusive, or otherwise, of the compensation for services peculiar to the work. Be particular in specifying the States or companies, works, services connected with the works, and services not connected with them, if any, for which compensation was made.

Answer to 1st interrogatory on the part of the U. S. I belonged to the corps of topographical engineers. The extra compensation of two dollars and half per day was not an equivalent, or intended to be so, "for and in lieu of all other allowances" to me. Surveys and reconnoitering, with reference to roads and canals, I certainly conceive to be appropriate to the corps of topographical engineers.

Answer to the 2d. I was ordered frequently to co-operate with private companies "to perform duties connected with works of internal improvements," for which service it was perfectly understood and *sanctioned* by the Government that I was compensated by those companies.

Answer to the 3d. No.

Answer to the 4th. My opportunities have been active service, notoriously known, from 1824 to the present time, in a number of the States of the Union; for instance, as the chief engineer of works in N. York, New Jersey, Massachusetts, Rhode Island, Connecticut, Maryland, N. Carolina, South Carolina, Tennessee, and Kentucky. In reply to the remainder of the inquiry, I refer to my answer to 5th interrogatory of defendant.

WM. GIBBS McNEILL.

DISTRICT OF COLUMBIA, *Washington county:*

Personally appeared before me, one of the justices of the peace in and for said county, Wm. Gibbs McNeill, of North Carolina, now of New York, and made oath on the holy evangelists of Almighty God, that the answers to each and all of the foregoing interrogatories, both of defendant and on the part of the United States, are true and in all respects correct to the best of his knowledge and belief. As witness my hand and seal, this twenty-ninth day of January, in the year of our Lord 1842.

SAMUEL DRURY, *J. P.* [SEAL.]

Additional interrogatories on the part of the United States to Major McNeill.

Plaintiff's additional interrogatories.

5. In answering the first interrogatory on the part of the United States, you say—"the extra compensation of $2 50 per day was not an equivalent, or intended to be so, for [or] in lieu of all other allowances to me." The clause of the interrogatory to which you here respond appears to be in the following words: "Whether such extra compensation was not an equivalent for, and in lieu of, *all* other allowances" which "you were entitled to receive in kind, and which were granted to officers of your corps by law or regulation." This clause of the interrogatory should have been, and was intended to be, as follows: "Whether such extra compensation was not an equivalent for, and in lieu of, other allowances which you were entitled to receive in kind, and which were granted to officers of your corps by law or regulation." These allowances referred to transportation, fuel and quarters. You are now requested to state the particular case or cases in which, and the time when, such allowance was made to you, and on what duty you were then engaged.

6. In your answer to the 2d interrogatory on the part of the United States you state, that you were ordered frequently to co-operate with private companies, &c. The interrogatory had reference to works only in which the U. S. were engaged. Be pleased to answer the 2d interrogatory again, confining the answer to such works.

7. Your answer to the 4th interrogatory does not give the desired information. Be pleased to answer more fully and particularly as to the various points presented by that interrogatory.

Answers to "additional interrogatories on the part of the United States to Major McNeill," in the case U. S. vs. Gratiot.

Answer 5. As in putting this interrogatory an explanation is gone into of the meaning and extent of the 1st interrogatory on the part of the United States, it affords me the opportunity to give as it were the history of the circumstances under which the allowance of $2 50 per day was made and continued to me for several years. I would premise, that strictly speaking I do not consider that any per diem which I have ever received from the U. S., whether of $1 25 or $2 50, can in my opinion be termed "extra compensation," and in so designating it, it was thro' inadvertence, resulting from the fact, that ordinarily such allowances in common parlance have been termed "*extra*," although they were specially "*in lieu of*" other allowances; and yet, in the detail of circumstances above alluded to, it may be questioned if the allowance of $2 50 per day were not somewhat "*extra*," inasmuch as it provided for "*forage*," which was not by law among the allowances of a captain, or assistant topographical engineer, the rank then held by me.

By reference to the printed regulations it will be seen, that an allowance of $1 25 per day was made to officers employed in "surveying, reconnoitering, or exploring," in lieu of "quarters and transportation;" and also I think by regulation, at all events by usage, a per centage was allowed on disbursements within given limits, (2½ per cent. provided it did not exceed $2 00 (I think it was) per day); and also, when the services of a horse were necessary, if my recollection serves me, said horse was provided at the cost of the United States, or at least the actual cost of forage was paid by the U. S., when from the rank of the officer the law made no allowance of forage to him.

I was so situated, viz., in command of a brigade employed by order of the Government to ascertain the practicability, &c., of uniting the James and Kenhawa rivers, the Roanoke and Kenhawa, &c., in other words "reconnoitering and surveying," and thereby entitled, as usual, to the ordinary allowance of $1 25 per day, "in lieu of quarters and transportation." At the same time, as commanding officer, I made the requisite disbursements, on which I received 2½ per cent., and my duties requiring me to be mounted, the actual cost of keeping a horse was defrayed by the Government, and in all these several allowances amounted *to* $2 00 *to* $2 50 per day. When I received orders to repair to Baltimore, and co-operate with the Baltimore and Ohio railroad company in their project of a railroad from Baltimore to the Ohio river, provided I could do so without detriment to the service in which, with my brigade, I was then occupied in Virginia, I made the requisite arrangements, and forthwith repaired to Washington, on my way to Baltimore; and it was while in Washington, in an interview with the honorable Mr. Barbour, the Secretary of War, that in thanking him for the enlarged sphere of my duties, and possible opportunity of increased usefulness and distinction, I took occasion to remind him that, nevertheless, although my expenses would unavoidably be increased, my emoluments would be sensibly diminished, relinquishing as I should, and did, whatever pertained to the immediate command of my brigade, such as per centage on disbursements. My duties were to be at least as important and extensive as those of the highest rank in my corps, while my pay and emoluments, as provided by law, only contemplated the discharge of subordinate duties—those of an *assistant* topographical engineer, and not those of one—not only in separate commands in Virginia, but co-operating with the B. and O. R. R. Co. over the whole country intermediate to Baltimore and the Ohio river. The case was, as I thought, a clear one, and, as it seems, the Secretary did; for he readily acquiesced in my suggestion that I should receive, "in lieu of quarters, fuel, transportation, and forage," an allowance of $2 50 per day, (about the same I would be in receipt while in the personal command of my brigade,) which I accordingly did receive, and continued to receive, while co-operating on the B. and O. R. road, and subsequently,

under similar circumstances, on other works. If there be much irrelevant in the foregoing answer to the 5th interrogatory, it is because, to the extent of my recollection, I desire to state *all* the circumstances which controlled the allowance—originated it—whether of $1 25 or $2 50 per day; and to any one, at all conversant with the circumstances under which either allowance was made, it must be obvious that, even with the most rigid economy, it barely, if ever, sufficed to support the officer in the discharge of duties imposed at the time by the necessities of the country, but which duties were not contemplated on the enactment of laws creating the office and affixing its emoluments.

Answer to the 6th interrogatory. I have recurred to my answer to the 2d interrogatory on the part of the United States. In this, the 6th interrogatory, you say, "the interrogatory" (to wit, the 2d on part of U. S.) "had reference to works only on which the U. S. were engaged;" and I am now asked to answer the interrogatory again, "confining the answer to such works." I answer, then, I was, while an officer of the corps of engineers, (topographical,) called on to perform duties connected with works of internal improvement. This was by order of the War Department, as I have heretofore said, in answer to the 2d interrogatory; and I know of no further connection that the United States had with those works, than that, in those days, they (the works) were esteemed *national*, and the officers of the General Government were ordered to co-operate in aid of them. My prolonged answer to interrogatory No. 5, on the part of the United States, I think will shew I did "consider such duties as coming legitimately within the line and scope of my duties," and that I did not "charge or receive, or expect to receive, any other compensation than that allowed in the army regulations," or by special regulation of the department. I was at no time connected with any work of internal improvement, (as well as I now recollect,) with which the United States had further connection than resulted from the *loan* of its officers during the incipiency of said works, unless it be the Ohio and Chesapeake canal, to which the Government subsequently subscribed. My emoluments while connected with which, were such as stated in my previous answer to have been while employed in Virginia between the James and Kenhawa, and the Roanoke and Kenhawa rivers, to wit, a per diem of $1 25, 2½ per cent. on disbursements, and forage for a horse. I hope *this* answer is full and explicit, at least I mean it to be so; and it is, if I understand the question.

Answer to the 7th interrogatory on the part of the United States. I am told that my "answer to the 4th interrogatory does not give the desired information," and I am requested to answer more fully and particularly as to the various points presented by that interrogatory. Referring to my answer to the 4th interrogatory, I'll endeavor to make my answer to the 7th as full and particular as in my power. As far as my answer to the fourth interrogatory does

go, it is as explicit as I can make it; that is, it states "what have been my opportunities of becoming acquainted with the practice of States or companies, referred to in the defendant's 5th interrogatory;" and as, "in reply to the remainder of the interrogatory," (the fourth on the part of the U. S.,) "I refer to my answer to 5th interrogatory of defendant," I'll refer to that answer. It is, in substance, to the effect, that the duties of engineer and "agent" are not necessarily conjoined; that they are seldom so; that I have scarcely known them to be so, except in my own person; and when so, it was a matter of special agreement. By which I meant, and it was so understood, that "bureau services, of the character charged in the 3d interrogatory of the defendant, are *not required* of the engineer," &c. &c. On the contrary, it has been because of my decided preference to be unincumbered with such *incubi* as "boards of administration," "commissioners," "*et id genus omne*," that I have made it a point, whenever in personal charge of a public work, (whether carried on by State or individual enterprise,) to cause the arrangement by which the bureau services, and those of the engineer, were to be, as far as practicable, performed by the same individual, to wit, myself. The very fact, that to perform the duties of both engineer and agent required almost continuous personal attention, of course enhanced, and caused to be proportionally appreciated, the value of the services proposed to be rendered; and the engineer discharging admittedly *extra* duties, was paid accordingly.

I return to the 4th interrogatory on the part of the United States. I have performed every "bureau service known to be performed on works of internal improvement," except such as, in my opinion, could better be performed by commercial men, (such as making foreign importations, through channels with which I was not familiar). I have conducted the correspondence, made the contracts, decided in disputed cases, employed all subordinates, &c., (of course always subject to the supervision of the board). As an engineer I have never "held any official relation to a State," (I mean as the engineer of a State,) except the State of Georgia, of which I was chief engineer, but the duties of which office I never fulfilled, viz: I resigned before entering on those duties. It is difficult, indeed impossible, for me to say, at this day, how my employers reasoned in determining compensation for *conjoined* duties, such as I have alluded to. On the western railroad, Massachusetts, where, as one of the chief engineers, I received $5,000 per annum for occasional visits, (having no bureau duties,) I believe the *agent* received, say $3,000, and the "resident engineer" $5,000 per annum; the combined duties of the three being such as had heretofore mainly been discharged in my own person. If there be any thing in the foregoing answers which suggest further enquiries, I'll cheerfully answer them.

WM. GIBBS McNEILL.

MARCH 15, 1842.

It is mutually agreed that the foregoing deposition shall *shall* be considered as if it had been regularly sworn to, and is embraced in the agreement in regard to the depositions taken in the case of the United States vs. General Charles Gratiot.

Witness our hands.

CHS. B. PENROSE,
Solicitor of the Treasury.
C. GRATIOT.

The defendant next read in evidence to the jury a deposition of Captain Andrew Talcott, with an account thereto annexed; which account is the same as that annexed to the deposition of Benjamin Fowler, and therefore not again inserted; which deposition is in the words following, to wit:

Captain Talcott's deposition.

Interrogatories propounded to Captain Andrew Talcott by the defendant.

Int. 1. State what public offices or stations you have filled; how long have you filled the same; and what have been your pursuits or professions, since you have ceased to be an officer of the corps of engineers, in the service of the United States, to the present time?

Ans. 1. I held a commission in the United States corps of engineers from August, 1818, to September, 1836, and in that interval was advanced from the rank of 2d lieutenant to that of captain in said corps. Since I left the corps of engineers, my pursuits and employment have been civil engineering; and, for the last eighteen months, commissioner on the part of the United States for exploring a portion of the northeastern boundary of the United States.

Int. 2. State, as nearly as you can, what compensation you have received from the United States, over and above your ordinary pay and emoluments as an officer of the corps of engineers in the army of the United States; and state also for what service or business, specifying, as nearly as you can, the periods for which you were compensated.

Ans. 2. I have received from the United States extra allowances for extra services, viz: one dollar a day for superintending the labor of military convicts employed on the construction of Fort Monroe, from the 1st to the 7th June, 1822—$7 00; two dollars a day, from March to 1831, as special agent of the Engineer department, for examining claims of the contractors for extra work done by them on the Cumberland road in Ohio, caused by changing of grade, &c., after signing the contracts; ten dollars per day as principal astronomer on the northern boundary of Ohio, from the 1st of January, 1833, to the 9th May, 1836—$9,240 00; two dollars per day as commissioner on disbursements at Fort Monroe, from the 1st Octo-

ber, 1829, to the 31st August, 1834, the period when said disbursements ceased, $3,592.

Int. 3. Look at the account of Charles Gratiot, hereto appended, and state whether the services therein charged belong to "*civil engineering*," "*military engineering*," or to *either* of them; state also whether bureau services of the like character are required of the "engineers" employed by States or companies in the United States, on works of internal improvement, or whether said services are not performed by a board of administration, or by some other person or persons specially employed for the purpose, who is, or are, compensated therefor, and not by the engineer; state what is your knowledge of the practice on the subject.

Ans. 3. I have examined the account appended, and am of opinion that the several items of services charged for do not appertain to either *military* or *civil engineering*. In State and company works, similar services are generally rendered by commissioners especially appointed for that purpose. The State of New York has a board of *canal commissioners;* the New York and Erie Railroad a *commissioner general* and *commissioners of divisions;* who render the State and company services similar to those charged for in the appended account. Many Government works have been carried on by commissioners, who call to their aid *engineers* and *architects*. It is but a few weeks since *three commissioners* and *a civil engineer* were appointed by the President to construct a dry dock at Brooklyn, N. Y.

A. TALCOTT.

Plaintiff's interrogatories.

Interrogatories on the part of the United States to Captain Andrew Talcott.

1. Have you not claims for a per diem, or commissions for disbursements made by you while an officer of the army, and which were not allowed to you in the settlement of your accounts at the Treasury? If so, do you not expect that a favorable decision for the defendant will operate as an authority for the admission of your claims?

Answer. To the first branch of the inquiry I answer, yes. As regards the second branch, the claims for a per diem not yet allowed at the Treasury, is a question already settled by the Supreme Court in the case referred to in the interrogatory; vide the opinion delivered by Mr. Justice Story at the January term of 1841.

2. In answering the defendant's second interrogatory, you state that, while an officer of the corps of engineers, you received certain extra pay for extra services; state on what authority such extra pay was allowed to you; and whether any, and if so, what, extra allowances were made to you, unless they were so authorized?

Answer. Whenever I considered myself entitled to extra pay, I presented my accounts for the same through the Engineer department. When they were disallowed, I received notice of the same

from the Third Auditor; I must, therefore, refer to him for the authority allowing said accounts.

3. In answer to the defendant's third interrogatory you say that, in your opinion, the several items of services charged by him do not appertain to either civil or military engineering. Be pleased, then, to state to what class of duties they properly belong. Do you not consider them the proper duties of the chief of the corps of engineers, as prescribed by the general regulations of the army, in force during the time charged in the defendant's accounts?

Answer. The several items of services charged for in the defendant's accounts, and which I said did not appertain to either civil or military engineering, are not engineering duties, and I do not consider them the appropriate duties of the chief engineer, or of any other engineer.

4. In your answer to the defendant's third interrogatory, you refer to the practice in State or company works. In such works are the commissioners allowed more than one compensation for services rendered? What annual compensation is generally allowed to them, either by States or companies? Does their pay, including all their allowances of every description, generally exceed in amount that allowed to a brigadier general in the army of the United States? Did not the officers and the agents under the direction of the chief of the corps of engineers, render services similar to those of the "commissioners of divisions" referred to in your answer?

Answer. Commissioners are sometimes allowed more than one compensation; when they perform engineering duties they are paid for the same; the amount of their compensation is usually a matter of special contract, and is very variable. When I was an officer of the corps of engineers, I rendered services similar to those discharged by a "commissioner of division," and I received extra compensation for such services.

5. In your answer to defendant's third interrogatory you state, "it is but a few weeks since, *three commissioners* and a *civil engineer* were appointed by the President to construct a dry dock at Brooklyn, N. Y." Were not the appointments of these commissioners revoked before they had entered on their duties, and if so, do you know of any understanding, express or implied, between them and the Government, at the time they were appointed, by which they were to receive any extra allowance whatever, beyond their compensation as commissioners? Is the "civil engineer" engaged on the work at Brooklyn allowed a compensation as "engineer," and at the same time an extra compensation for his services on said work?

Answer. I know nothing in the premises further than the fact as stated; and that I learned from its public announcement.

6. Is it the custom in State or company works to allow the officers and agents extra compensation for any service or duty, which

they may be called on to perform in the line or scope of their respective stations? If so, state the State or company work in which such a custom exists.

Answer. I must refer to my answer to the 4th interrogatory as a proper answer to this?

7. When General Gratiot performed bureau duties, did he also perform the duties of engineer to each survey, or to any of the works of civil or military engineering, referred to by him in his accounts? State fully the practice pursued by the engineers employed on the works, in relation to their duties, and how far the agency or supervision of the chief of the corps was deemed necessary to the faithful discharge of such duties.

Answer. During the time General Gratiot was chief engineer, and charged with bureau duties at the Seat of Government, he often inspected the works (fortifications and internal improvement) with which I was charged, and then and there gave professional advice and instructions relating to them. Cases of doubt or difficulty occurring at a work were usually referred to the chief engineer for solution; suggestions as to any change in the plan and manner of constructing a work were so referred, and were acted on by the chief engineer.

8. Was not the office held by General Gratiot considered chiefly important as a proper medium of communication with the War Department? Was not every act in relation to the works, referred to in the foregoing interrogatory, done under the immediate orders of the War Department? And were not all his communications made out and signed by an order or authority of the War Department? If you answer affirmatively, then be pleased to state whether, in your judgment, the Secretary of War, as the responsible head of the Department, is not better entitled than any one else to extra compensation.

Answer. I know not how the office held by General Gratiot was generally considered; for my own part I considered him as the *chief engineer*, and as such responsible to the country for the correct discharge of the professional duties of engineers, civil and military, employed under his orders. I have never supposed he went to the Secretary of War for professional advice, but to give it; and it was very seldom his letters to me were signed "by order or authority of the Secretary of War." A. TALCOTT.

DISTRICT OF COLUMBIA, *Washington county.*

Personally appeared before me, the subscriber, one of the justices of the peace in and for said county, Andrew Talcott, of the State of Connecticut, and made oath on the Holy Evangelists of Almighty God, that the answers to each and all of the foregoing interrogatories, both of the defendant, and on the part of the United States, are true, and in all respects correct, to the best of his knowledge and belief.

As witness my hand and seal, this first day of February, in the year of our Lord 1842. SAMUEL DRURY, *J. P.* [L. S.]

Plaintiff's additional interrogatories.

Additional interrogatories on the part of the United States to Capt. Andrew Talcott.

9. In answering the third interrogatory on the part of the United States, you say that you do not consider the several items of services charged for in the defendant's accounts "as the appropriate duties of the chief engineer," or of any other engineer. State whether the regulations of the army for the corps of engineers are not considered to be as binding on the officers of that particular corps, as the army regulations, in reference to any other branch or corps of the army, are binding on the officers of such other branch or corps.

10. In answering the 5th interrogatory on the part of the United States, you say, that when an officer of the corps of engineers, you rendered services similar to those discharged by a "commissioner of division," be pleased to state some particular case in which such extra compensation was paid to you, giving the particulars of time, place and amount.

11. In answering the 7th interrogatory on the part of the United States, you say, that the defendant, while chief engineer, "often" inspected works with which you were charged. State whether such inspections were not enjoined upon him by the regulations, and whether they did not form a part of his proper duties as chief of the corps; and whether while engaged in these inspections he was not permitted by said regulations to charge the travelling allowance, from his proper station at Washington, to said works and back; whether in general said allowance is not sufficient to cover the travelling expenses; and whether the cases of doubt or difficulty, which you mention as being referred to the chief engineer for solution, were not submitted by the chief engineer, if deemed by him of sufficient importance, to the Secretary of War for decision.

Answer 9. Army regulations emanating from competent authority, I consider as binding on the corps of engineers, as on any branch or corps of the army.

10. At New Utrecht Point, part of September, 1824, two dollars a day; at Brenton's Point, the 4th quarter of 1824, two dollars a day; at Pea Patch Island, part of the year 1825, two dollars a day; at the same place in 1826, a commission of $2\frac{1}{2}$ per cent. on disbursements; at Old Point Comfort, from the 1st of October, 1829, to the 31st of August, 1834, two dollars a day; amounting in the aggregate to five thousand and forty-four $\frac{60}{100}$ dollars.

11. To the three first clauses I answer in the affirmative; as to the sufficiency of the mileage allowance to cover travelling expenses in the particular case of inspections, I am unable to decide, for I have had no experience on which to form an opinion. In reference to the last clause, I have no knowledge beyond that con-

veyed in my answer to the 8th interrogatory, viz: that the letters from the chief engineer to [me] were seldom signed "by order or authority of the Secretary of War."

A. TALCOTT.

I said in answer to the first branch of defendant's third interrogatory, that I had "examined the account appended, and am of opinion, that the several items of services charged for, do not appertain to either military or civil engineering," I meant to say by that, that the services therein charged, were not military or civil engineering. In the latter sense only, my said reply is to be read, to wit: I have examined the account appended, and say that, the several items of services charged for, are not either civil or military engineering.

A. TALCOTT.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., J. P. [SEAL.]

The defendant then read in evidence to the jury, the following copies of documents duly certified from the Treasury Department.

T. L. Smith's deposition.

Interrogatories propounded on the part of the defendant to the Register of the Treasury.

What office or station do you fill; and how long have you filled the same?

Please furnish from the files of your office, certified copies of the following voucher and warrants, namely:

1. Of Treasurer of the U. S. draft, No. 3116, to the order of C. Gratiot, on the Bank of the U. S. at Baltimore, for the sum of thirty thousand and fifty dollars. (30th Aug't, 1821.)

2. Of do. do. No. 3147, to the order of C. Gratiot, on the Bank of the U. S. at Baltimore, for the sum of one thousand dollars. (4th Sep'r, 1821.)

3. Of do. do. No. 3152, to the order of said Gratiot on the Bank of the U. S. at Norfolk, for the sum of $15,000. (5 Sep'r, 1821.)

4. Of voucher No. 52, charged in abstract No. 2, of Samuel Lane's accounts, dated 30th September, 1819. (Number of the report and file 41,025, of said Register's office.)

Interrogatory proposed on the part of the defendant to the Register of the Treasury.

What office or station do you fill; and how long have you filled the same?

Answer. I, Thomas L. Smith, am Register of the Treasury of

the United States, and have filled that office since the 1st of June, 1829.

"Please furnish from the files of your office, certified copies of the following voucher and warrants, namely:

1. Of the Treasurer of the U. S. draft, No. 3,116, to the order of C. Gratiot, on the Bank of the U. S. at Baltimore, for the sum of thirty thousand and fifty dollars. (30 Aug., 1821.)

2. Of do. do. No. 3,147, to the order of C. Gratiot, on the Bank of the U. S. at Baltimore, for the sum of one thousand dollars. (4 Sep'r, 1821.)

3. Of do. do. No. 3,152, to the order of C. Gratiot, on the Bank U. S., at Norfolk, for the sum of fifteen thousand dollars, (5 Sep., 1821.)

4. Of voucher No. 52, charged in abstract No. 2 of Samuel Lane's accounts, dated 30th September, 1819, (number of report and file 41,025 of said Register's office.)"

Reply to the application for certified copies of the "voucher and warrants."

I, Thomas L. Smith, register as aforesaid, reply, that the draft and warrants referred to ("1, 2, 3") were lost when the Treasury building was burnt, on the night of the 31st March, 1833; and that a certified copy of No. 52 ("4") is hereunto annexed.

T. L. SMITH,
Register of the Treasury of the United States.

TREASURY DEPARTMENT,
Register's Office, 23*d February*, 1842.

No. 52.—Commissioner of Public Buildings,
To Joseph G. Swift, DR.

1817.		
April.	For paid advance to A. H. Laurence & Co., for bills of exchange to purchase sheet copper and iron mongry for the Capitol U. S., *a* 3 per cent. on £3,940 stg. - -	$525 33
	commission *a* 1 per cent. on $1,803 $\frac{44}{100}$ disbursed in the purchase of said bills -	180 36
	ditto *a* 5 per cent. on $23,753 $\frac{57}{100}$, disbursed in the purchase of lumber and marble for Capitol - - - - -	1,187 67
	paid travelling expenses of artists from N. York to work on said Capitol - -	135 63
		$2,028 99

Rec'd payment,

J. G. SWIFT.

NEW YORK, *September* 30, 1819.

Plaintiffs' interrogatory.

Interrogatory or requisition on T. L. Smith, register of the Treasury, made by defendant.

Be pleased to furnish a certified copy of J. D. Graham's account of salary as commissioner for establishing the northeastern boundary of the U. S.—5th Auditor's Office, settlement No. 5,403.—Also a copy of the salary account of the said commissioner, found in settlement No. 5,797, from the office of the said 5th Auditor.

T. L. Smith, Register, answers, that the papers, called for as above, have been duly furnished and authenticated in the usual form, and are hereto appended.

T. L. SMITH.

REGISTER'S OFFICE, *March* 16, 1842.

DISTRICT OF COLUMBIA, *Washington county, ss:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Major Graham's account, with documents.

The United States to James D. Graham, one of the commissioners for surveying the boundary line between the United States and the British provinces, DR.

1840, December 31.—For amount of my salary as commissioner, appointed by the President of the U. S., under act of Congress of July 20, 1840, (see accompanying documents,) from 23d of August to 31st December, 1840, being 4 months and 9 days, at $3,000 per annum - - - - - - $1,067 93

(Signed) J. D. GRAHAM, *Commissioner.*

Dec'r 31, 1840.

Copy No. 1.

DEPARTMENT OF STATE,
Washington, 18th August, 1840.

SIR: The President having decided that the exploration of part of the northeastern boundary should be confided to you, I have to request that you will repair immediately to Portland, where you will find Messrs. Renwick and Talcott, the other two commissioners, and an agent of the department, who for the present will disburse for the whole commission under their directions. You will find there the instructions for Mr. Cleaveland, in whose place you are appointed, and will consider them as direct to yourself.

I am, sir, your obedient servant,

(Signed,) JOHN FORSYTH.

To Major JAMES D. GRAHAM,
U. S. A., West Point, New York.

Extract No. 2.

WEST POINT, N. Y., *August* 23, 1840.

Hon. JOHN FORSYTH, *Secretary of State.*

SIR: "I have the honor to acknowledge the receipt, this day, of your communication of the 18th instant, informing me of my having been appointed a commissioner in the place of Mr. Cleaveland, for the exploration of part of the northeastern boundary. I shall proceed with all despatch, as instructed, to Portland, to join the other two commissioners, in order to enter upon the discharge of the duties assigned me as soon as practicable."

I have the honor to be, sir, with much respect, your obt. servt.,

(Signed) JAMES D. GRAHAM.

No. 3.—Extract from instructions from the Department of State to Mr. Cleaveland, which Major Graham was directed by the Department to consider as directed to himself.—See No. 1.

"DEPARTMENT OF STATE,
Washington, 21*st July*, 1840.

PARKER CLEAVELAND, esq.,
Bowdoin College, Brunswick, Me.

SIR: The President has thought proper to appoint you a commissioner, under the act of Congress of the 20th July, 1840, authorizing an exploration and survey of that part of the northeastern boundary line of the United States which separates the States of Maine and New Hampshire from the British provinces. Your compensation will be at the rate of $3,000 per annum, and you will be allowed your expenses while in the field."

I am, &c., (Signed) JOHN FORSYTH.

I certify that the above, marked No. 1, No. 2, and No. 3, are true copies and extracts.

(Signed) JAMES D. GRAHAM, *Commissioner, &c. &c.*

No. 5,403.

TREASURY DEPARTMENT,
Fifth Auditor's Office, 23*d February*, 1841.

I do hereby certify, that in pursuance of a decision of the Comptroller of the Treasury, contained in his letter to me of 20th instant, "in opposition to the view taken of the subject in my report to him of 17th February instant, a copy of both of which is herewith," I find that there is due to Major James D. Graham, of the army of the United States, one of the commissioners appointed by the President, under the act of Congress of 20th July, 1840, for exploration and survey of the boundary line between the States of Maine and New Hampshire and the British provinces, the sum of one thousand two hundred and forty-six dollars and forty-three cents, as follows, viz:

For amount of his own compensation, as one of the commissioners aforesaid from 23d August, per letter of Secretary of State to this office of 13th instant, a copy of which is herewith, to 31st December, 1840, making 4 months and 9 days inclusive, at $3,000 a year - - - - - - - $1,067 93

Add thereto, in pursuance of said decision, amount of the compensation of Lieut. Thomas J. Lee, whom he appointed as his disbursing agent, by authority vested in him as commissioner, from 4th September, to 31st Dec'r, 1840, making 119 days, both days included, at $1 50 per day. Per said Lee's account herewith - 178 50

$1,246 43

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

STEPHEN PLEASANTON, *Auditor.*

To JAMES N. BARKER, esq.,
Comptroller of the Treasury of the U. States.

The amount to debit of Major James D. Graham, per statement and register's certificate herewith, is - $2,117 44

Deduct amount credited to him by the Auditor in this report - - - - - - - 1,246 43

Leaving due to the United States the sum of eight hundred and seventy-one dollars and one cent - - $871 01

TREASURY DEPARTMENT,
Comptroller's Office, February 27, 1841.

Admitted and certified as corrected.

J. N. BARKER, *Comptroller.*

To T. L. SMITH, esq., *Register.*

No. 5,797.

TREASURY DEPARTMENT,
Fifth Auditor's Office, 28th February, 1842.

I hereby certify that I have examined and adjusted an account between the United States and Major James D. Graham, one of their commissioners for exploration and survey of the northeastern boundary line, commencing 1st March, 1841, and ending 28th February, 1842, and find him chargeable thereon with the following, viz:

To balance due from him, per report No. 5,407, and Register's certificate herewith - - - $321 38

warrants on the Treasurer, per said Register's certificate—

For No.	7,478,	dated	17th	March, 1841, for	$1,000 00	
"	8,065,	"	30th	April, "	1,000 00	
"	8,306,	"	28th	May, "	3,000 00	
"	8,316,	"	29th	" "	372 94	
"	8,370,	"	3d	June, "	500 00	
"	8,429,	"	14th	" "	326 00	
"	8,535,	"	28th	" "	181 06	
"	8,536,	"	"	" "	1,000 00	
"	8,783,	"	8th	July, "	700 34	
"	8,737,	"	13th	" "	800 00	
"	8,951,	"	27th	" "	500 00	
"	9,099,	"	9th	August, "	500 00	
"	9,153,	"	16th	" "	474 92	
"	9,200,	"	23d	" "	500 00	
"	9,404,	"	14th	September, "	2,500 00	
"	9,769,	"	11th	October, "	3,000 00	
"	9,771,	"	"	" "	500 00	
"	9,786,	"	13th	" "	3,000 00	
"	9,787,	"	"	" "	257 95	
"	9,811,	"	19th	" "	500 00	
"	9,933,	"	3d	November, "	1,660 00	
"	9,963,	"	8th	" "	500 00	
"	9,984,	"	11th	" "	1,840 00	
"	10,225,	"	8th	December, "	374 33	
"	477,	"	24th	February, 1842, for	284 35	
						25,271 89
						$25,593 27

I also find that he is entitled to credit on said account for the following, viz:

By appropriation for marking the boundary line between the States of Maine and New Hampshire and the British provinces, per act of Congress, of 20th July, 1840.

For amount of his salary as one of the commissioners aforesaid from 1st March, 1841, the date to which it was credited in last settlement, per report No. 5,407, to 28th February, 1842, both days included, making one year, allowed under the decision of the comptroller, as expressed in his letter to this office of the 20th February, 1841, a copy of which is filed with report No. 5403, 3,000 00

" amount of his contingent expenses for said period, consisting of instruments for survey, repair to ditto, stationery, nautical almanacs, office rent at Washington, pay of messenger, blank books and forms, office furniture, making apparatus

and instrument cases, provisions, forage for horses, travelling expenses of himself and party, subsistence, hire of wagon and teams, level rods, blankets, tents, cooking utensils, axes, freight and storage, damages to individuals through whose lands the survey was carried, camp equipage, per his account herewith, approved by the Secretary of State, together with abstracts D & E of said contingencies, viz:

From 1st to 3d March, 1841, per abstract D - - - -	486 96	
From 4th March, 1841, to 28th February, 1842, E - - -	7,894 58	
		8,381 54
		11,381 54
Leaving a balance due the United States from him, the said Major James D. Graham, of fourteen thousand two hundred and eleven dollars and seventy-three cents, with which he is now to be charged, -		14,211 73
Dollars,		25,593 27

As appears from the statement and vouchers herewith transmitted for the decision of the comptroller of the Treasury thereon.

STEPHEN PLEASANTON, *Auditor.*

To JAMES N. BARKER, Esq.,
Compr. Treasury U. S.

I admit and certify the above balance, this first day of March, 1842.

J. N. BARKER, *Act. Comptr.*

The defendant next read in evidence to the jury the deposition of Major J. D. Graham, in the words following:

Maj. Graham's deposition.

Interrogatories propounded by defendant to Maj. J. D. Graham, of the topographical engineers.

1. State what offices or stations you have filled from the 1st August, 1840, to the present time.

2. State what compensation you have received from the United States during and for the time specified in the first interrogatory, and for what services; separating the amounts so received under each class of service or station?

Answer to 1st interrogatory. Since the 1st of August, 1840, I have filled the station of a major of topographical engineers in the

army, and continue to hold the same station now. Since the 18th of August, 1840, to the present time, I have held the station of a commissioner for the survey and exploration of the northeastern boundary of the U. S., to which station I was appointed by the President of the United States.

Answer to 2d interrogatory. Since the 1st of August, 1840, I have received the pay and emoluments appertaining to my grade and command as a major of topographical engineers, to include the 28th day of February, 1841. Since the 23d of August, 1840, to the 28th February, 1842, I have received the compensation of a commissioner for survey and exploration of the northeastern boundary of the United States, under the act of 20th July, 1840, a special appropriation having been thereby made to defray the expenses of said survey, and the compensation was pointed out and fixed by the President, when the appointment was made.

J. D. GRAHAM.

WASHINGTON, *March* 16, 1842.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before [me], this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [L. S.]

The defendant next read in evidence to the jury the following deposition of Colonel Trueman Cross, in the words following:

Col. Cross' deposition.

Interrogatories propounded on the part of defendant to Col. T. Cross.

1. What office or station do you fill; and how long have you filled the same?

2. State whether you were a major in the quartermaster's department from 23d July, 1836, to the 23d July, 1837; and whether, during that period, you did not perform the functions and duties of quartermaster general, and received the pay and emoluments attached to the same; as also the pay and emoluments of your then grade of major in said department. State further, whether previous to your entering on the duties of quartermaster general, you stipulated, or rather made a contract, for the pay and emoluments attached to the said grade of quartermaster general, in addition to the ordinary pay, &c., of major, or whether the contract was simply an implied one, and as you had performed the duties attached to both offices, you claimed the pay, &c., attached to each, which were accordingly paid to you by the Pay department.

Answer. To the first interrogatory, I answer, that I hold the office of assistant quartermaster general in the army of the United States, with the rank of colonel, and have filled said office since the 7th day of July, 1838.

To the second interrogatory, I answer, that I was a quartermaster, with the rank of major, in the army of the United States, from the 23d July, 1836, to the 23d July, 1837; that I held at the same time an appointment as acting quartermaster general from the President of the United States, dated the 23d July, 1836, and performed all the functions and duties of quartermaster general in addition to my ordinary duties as quartermaster, during the period mentioned in the interrogatory, to wit: from the 23d of July, 1836, to the 23d July, 1837, and sometime after; that as General Jessup, the quartermaster general of right, was then in command in the field as a brevet major general, and receiving the pay and emoluments of that grade, I considered myself legally entitled to the pay and emoluments provided by law for the quartermaster general, and claimed them accordingly; that the second comptroller submitted the claim for the legal advice of the Attorney General of the United States, whose action on the case being delayed for a considerable time, I was necessitated to draw my pay and emoluments as quartermaster from the 23d July, 1836, to the 30th April, 1837; that on the 11th July, 1837, the Attorney General gave an opinion in favor of my claim for the pay and emoluments of quartermaster general, upon which the second comptroller ordered its payment, and I accordingly received the compensation provided by law for that office, for the time specified in the interrogatory, to wit: from the 23d of July, 1836, to the 23d of July, 1837, and further until General Jessup ceased to receive pay as a brevet major general, and became entitled to that of quartermaster general; that the pay and emoluments which I had previously drawn as quartermaster, while a decision on my claim as acting quartermaster general was in suspense, was disallowed by the accounting officers, and refunded by me to the United States on notification to that effect; that on the 13th of August, 1839, having been informed that the Attorney General had given an opinion that assistant surgeon King, who had acted as surgeon general of the army under similar circumstances, and had received pay in that capacity, was entitled also to his pay and emoluments as assistant surgeon, provided he had performed both duties, and that the allowance had been made accordingly, I preferred my claim for pay and emoluments as quartermaster, which was allowed by the second comptroller as being in conformity with the opinion of the Attorney General in the case of Doct. King, and I received the pay and emoluments as quartermaster for a period comprehending the time specified in the interrogatory, to wit: from the 23d July, 1836, to the 23d July, 1837.

In further answer to the said interrogatory, I say, that there was no contract or stipulation whatever about pay, before I entered upon the duties of acting quartermaster general; that I received pay in that capacity because I considered myself legally entitled to it for discharging the duties of the office, and that, as I had also performed the duties of quartermaster, I claimed the pay and emoluments provided by law for that office, after it had been set-

tled by the Attorney General's opinion, and the action of the accounting officers in Doctor King's case, that I was entitled to my pay and emoluments in that capacity.

T. CROSS.

DISTRICT OF COLUMBIA, *Washington county, ss.*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., J. P., [SEAL.]

Col. Totten's deposition.

The defendant next read in evidence to the jury, the deposition of Colonel Joseph G. Totten, the material parts of which are the first, second and third interrogatories of the defendant, and the answers of the witness thereto, and the first additional interrogatory on the part of the defendant, and the answer of the witness thereto; and the interrogatories on the part of the United States, and the answers of the witness thereto; which several interrogatories and answers are in the words following:

Interrogatories propounded to Col. Jos. G. Totten, of the corps of engineers, and chief engineer, on the part of the defendant.

Interrogatory 1. What office or station do you fill; and how long have you filled the same?

Answer. I fill the office of colonel of the corps of engineers, and chief engineer, to which office I was promoted from the grade of lieutenant colonel of engineers on the 7th of December, 1838, and I have filled the office ever since.

Interrogatory 2. Examine the records and other documents belonging to, and now on file or otherwise in, the engineer department, and state therefrom as nearly as you can, what were the affairs or business committed by executive authority, or otherwise, to the said engineer department, to be ministered and administered by Charles Gratiot, then the colonel of the corps of engineers, and br. gen'l by brevet in the army of the United States, from the 30th July, 1828, to the 6th December, 1838, inclusive.

Answer. It appears from the records of the engineer department, that the affairs or business committed to the general direction, supervision and management of the said department, during the period stated in the interrogatory, were the following, namely:

1st. *Military Engineering.*—Reconnoitering and surveying for military purposes, with the collection and preservation of topographical and geographical memoirs and drawings referring to those objects; the selection of sites; the formation of plans and estimates; and the construction, repairs and inspection of fortifications, constituted affairs and business committed to the general direction, supervision and management, of the said engineer department, and there appears to have been disbursed for the fulfilment of those objects, and to have been accounted for to the Treasury Depart-

ment, through the said engineer department, during the period the said Gratiot was chief engineer, about $7,537,675.

2nd. *Civil Engineering.*—First, reconnoitering and surveying, &c., under the provisions of the act of the 30th April, 1824, entitled "An act to procure the necessary surveys, plans and estimates, upon the subject of roads and canals," constituted affairs and business committed to the same general direction, supervision and management: for the fulfilment of these objects, there appears to have been disbursed and accounted for to the Treasury, through the said engineer department, during and for the period stated above, about $67,980.

Second. The superintendence of the execution of the acts of Congress in relation to internal improvements, by roads, canals, the navigation of rivers, and repairs and improvements connected with the harbors of the United States, or the entrance into the same, with the execution of which the War Department was charged, and the inspection of the operations for the execution thereof, constituted affairs and business committed to the same general direction, supervision and management, and for the fulfilment of these objects there appears to have been disbursed and accounted for to the Treasury, through the engineer department, during and for the period stated above, about $10,032,870.

Third. Construction of light houses and beacons, constituted affairs and business committed in the same way, and for which objects there appears to have been expended and accounted for to the Treasury, through said engineer department, during the period stated in the interrogatory, the sum of about $96,625.

3d. *Military Academy.*—During the period stated above, the then colonel of the corps of engineers was the inspector of said academy, and was charged, by executive order, with the correspondence relating to it. There appears to have been expended for the support of that institution, and accounted for to the Treasury, through the engineer department, and for the same period, the sum of about $323,263.

4th. *Lithographic press of the War Department.*—This establishment was placed, during the period of its existence, under the control of the engineer department: the sum which appears to have been expended in its support, and accounted for to the Treasury Department, through the engineer department, amounted to about $2,057.

5th. *Northwest Executive building.*—The execution of the work "for fitting up the basement rooms of the executive building, occupied by the War Department," was also placed under the direction of the engineer department. The amount expended and accounted for to the Treasury, through said department, appears to have amounted to about $3,120.

6th. *Northern boundary of the State of Ohio.*—The operations in fulfilment of the provisions of the act of the 14th of July, 1832,

entitled "An act to provide for the taking of certain observations preparatory to the adjustment of the northern boundary of the State of Ohio," were under the general direction of this department. The amount expended in this service, and accounted for to the Treasury, through the engineer department, appears to have been about $35,474.

7th. *Ministerial and administrative duties.*—Receiving, acting on, and causing to be filed in the archives of the engineer department, all the letters and other papers, not accounts, thereto referred or received at said department. Responding to the letters or other communications addressed directly to it, or referred to it by the Secretary of War; examining and causing to be filed all returns of property transmitted by the subordinate agents; examining the estimates (yearly, quarterly, and monthly,) transmitted by the disbursing agents of the department; making requisitions on the Secretary of War for the funds to be remitted in fulfilment of said estimates when approved; directing the mode of applying and accounting for such remittances; keeping an account with the Secretary for said remittances; examining the vouchers rendered by said Treasury disbursing agents, for settlement through the engineer department, and finally transmitting the said accounts to the Auditor of the Treasury for settlement, constituted affairs and business committed to the general direction, supervision and management of the said engineer department. These disbursements appear to have amounted, during the period stated in the interrogatory, to about $18,089,067. Making for a portion of the time weekly reports to the Secretary of War of the proceedings in said department, in relation to each letter or paper referred to, or written by direction of the War Department; causing all letters and other papers prepared in said department to be duly recorded; examining and approving, or returning for correction or amendment, contracts for works, or supplies required for the prosecution of the operations carried on under the superintendence of the said department, and transmitting said contracts subsequently to the Second Comptroller for file; examining and reporting upon doubtful or disputed claims on contracts executed under the superintendence of said department; making, when required, special reports on cases of claims referred to the War Department by resolution of either branch of the National Legislature, or in replies to calls from committees, or members of Congress, or Secretary of War, or on applications made to the Secretary of War, or directly to said department; causing to be recorded the substance of the letters and other papers received at the engineer department which related to its current business; and making quarterly reports, to the proper accounting officer of the Treasury, of such disbursing agents of said department as had rendered their accounts for settlement, and of those who had failed in that particular, constituted affairs and business committed to the same general direction, supervision and management.

Interrogatory 3rd. Examine the records and files of the Engineer department, and state therefrom what affairs or business heretofore committed to, ministered and administered in the Engineer department, have been transferred to "some other branch of the service" since 1837; state also by what authority the said transfers were made; and, with your answer, furnish copies of papers directing said transfers.

Answer. The superintendence of the Cumberland road excepted, all the works of internal improvement have been transferred to the Topographical bureau, by orders from the Secretary of War. The first order on the subject is believed to be one under date of the 1st August, 1838, and is as follows, namely:

Order transferring service.

"Memorandum."

"All new works of improvement, not of a military character, nor connected with fortifications, are assigned to the direction of the Topographical bureau, and also all such old works of a similar character as can be transferred without prejudice to the public service, and according to an understanding to be had between the chief engineer and the officer in charge of the Topographical bureau. When the arrangement shall have been completed, a statement will be furnished the Secretary of War, by each bureau, of the works of this character which it has in charge, and of the name of the officer who has the immediate superintendence of each work.

(Signed) "J. R. POINSETT.

"WAR DEPT., *Aug. 1st*, 1838."

Works transferred.

The projects of internal improvement which had been under charge of the Engineer department, and which were transferred to the Topographical bureau in pursuance of the foregoing instructions from the Secretary of War, were—

1. Improvement of the harbor of Presqu' isle, Penn.
2. Improvement of the harbor of Dunkirk, New York.
3. Works of Buffalo harbor, New York.
4. Erecting a mound or sea wall along the Peninsula which separates Lake Erie from Buffalo creek, New York.
5. Removing sand bar in New Bedford harbor, Mass.
6. Improving the harbor of Saybrook, Conn.
7. Improving the harbor of Westport.
8. Sea wall for preserving Fairweather island, Conn.
9. Securing public works at Southport, Conn.
10. Deepening the channel leading into Bridgeport harbor.
11. Improving channel of the river Thames, leading into Norwich harbor, Conn.
12. Improving the harbor [of] Chicago, Illinois.
13. Improving the harbor of Black Rock, New York.

14. Placing buoys in vicinity of monument on Steele's ledge, Maine.
15. Continuing the pier at Kennebunk, Maine.
16. Erecting a breakwater on Stanford ledge, Portland harbor, Maine.
17. Deepening the channel of the Coehees branch of the Piscataqua river, leading into Dover harbor, New Hampshire.
18. Breakwater at the mouth of Merrimack river, Mass.
19. Breakwater at Sandy bay, Massachusetts.
20. Preserving the point of land leading to the fort and lighthouse at the Gurnet, Duxbury, Massachusetts.
21. Preservation of Plymouth beach, Massachusetts.
22. Preservation of the beach at Provincetown harbor, Mass.
23. Improvement of the harbor at the mouth of Bass river, Mass.
24. Breakwater at Hyannis harbor, Mass.
25. Breakwater at Churches cove, in the town of Little Compton, R. I.
26. Improving the harbor of New Brunswick, New Jersey.
27. Protection and improvement of Little Egg harbor, N. Jersey.
28. Repairs at the harbor of Chester, Penn.
29. Repairing and improving the harbor of Marcus hook, Penn.
30. Improving the harbor of New Castle, Delaware.
31. Improving the harbor of Wilmington, Delaware.
32. Deepening the harbor of Baltimore, Md.
33. Improving the natural channels of the northern and southern entrances of the Dismal Swamp canal.
34. Removing a sand shoal in Pamlico river, N. Carolina.
35. Removing obstructions at Ocracock inlet, N. Carolina.
36. Opening a passage between the town [of] Beaufort and Pamlico Sound, and improving New river, N. Carolina.
37. Improving navigation of Cape Fear river, below Wilmington, N. C.
38. Improving navigation of Savannah river, Georgia.
39. Improving the harbor of Brunswick, Georgia.
40. Completing the inland channel between St. Mary's and St John's, Florida.
41. Completing the improvement of the harbor of Mobile, Alab.
42. Removing mud shoal in East pass to Appalachicola, Florida.
43. Deepening the channel of Pascagoula river, Florida.
44. Increasing the depth of water at mouths of the Mississippi river.
45. Road from opposite Memphis to the St. Francis river.
46. Continuing the improvement of the Cumberland river.
47. Continuing the pier and mole at Oswego.
48. Improvement of Big Sodus bay.
49. Work at the mouth of Genessee river.
50. Improvement of the harbor at the mouth of Oak Orchard creek.

51. Works at the harbor near the mouth of the river Raisin.
52. Piers at La Plaisance bay.
53. Removing obstructions at Black river, Ohio.
54. Improvements at the mouth of Huron river, Ohio.
55. Removing obstructions at Conneaut creek, Ohio.
56. Removing obstructions at Ashtabula creek, Ohio.
57. Improvement of Cleaveland harbor.
58. Removing obstructions at Grand river, Ohio.
59. Removing obstructions at Cunningham's creek, Ohio.
60. Road from La Plaisance bay to the Chicago road.
61. Road from Detroit to Saginaw bay.
62. Road from Detroit towards Chicago.
63. Road from Clinton to the rapids of Grand river.
64. Road between Sheldon's and the mouth of St. Joseph's river.
65. Road between Niles' and the mouth of St. Joseph's river.
66. Road from Detroit to Fort Gratiot.
67. Road from Detroit to Grand river.
68. Dredging machine for works on Lake Erie.

Of the preceding sixty-eight projects of internal improvement, those from No. 1 to No. 11, both inclusive, were transferred to the Topographical bureau on the 23d of August, 1838; that for improving the harbor of Chicago, (No. 12,) on the 7 of September, 1838; that for improving the harbor of Black Rock, (No. 13,) on the 17th of September, 1838; and those from No. 14 to No. 68, both inclusive, on the 22d of January, 1839, in compliance with the "Memorandum" of the Secretary of War of the 1st of August, 1838, as copied in the first part of this answer. On the 18 of June, 1839, the Delaware breakwater was also transferred to the Topographical bureau, in compliance with the following directions from the Secretary of War, viz:

"I have entertained the proposition of the chief engineer, and, in pursuance of the general policy of the order of the 1st of August, 1838, approve his recommendation to transfer at once all the concerns of the breakwater from the corps of engineers to the Topographical bureau. "J. R. P."

On the 30th December, 1841, the Secretary of War gave further directions relative to other projects of internal improvements under the direction of the Engineer department, of which the following is a copy:

"WAR DEPARTMENT, *Dec'r* 30, 1841.

"I have considered carefully the communications of the colonel of Topographical engineers, and of the colonel of the Engineer corps, upon the subject of the appropriate duties of those corps respectively, and have come to the following conclusions:

"1. Both corps are undoubtedly *military*, in the strictest sense; the officers of each have military rank, and are subject to the articles of war. Certain duties which fall under the denomination of

'civil engineering,' such as the improvement of roads, harbors, and rivers, are more appropriate to the Topographical corps, while other duties, relating to fortifications, &c., more properly belong to the corps of engineers. While this general rule of distribution of service is recognized, the department reserves to itself the employment of the officers of either corps, in duties not within the rule, whenever circumstances shall require it.

"2. I think the range of duties of each corps, and the boundary between them, is as well expressed by the existing regulations, (No. 858, and No. 878,) as they could be by any language that I could employ, excepting an apparent discrepancy between the expression in No. 858, 'surveying for military purposes,' and the language of No. 878, which assigns to the Topographical corps the duty of 'surveys for the defence of the frontier.' By inserting in this regulation the word "preliminary" before surveys, the whole difficulty will be obviated, and the object of the organization of the two corps will be effected. Those preliminary surveys, with a view to determine on the advantages of any particular work, seem very appropriate to the Topographical corps, while a more minute examination and survey, to determine the exact position of the proposed work, in reference to its construction, would fall within the duties of the other corps. Such alteration is hereinafter made accordingly.

"3. In reference to the works for the improvement of rivers and harbors mentioned in Col. Totten's letter of February 25, 1841, to Mr. Poinsett, after a careful examination of the different laws referred to, I cannot find in them any thing which prescribes the particular corps of engineers by which the works are to be performed, excepting, perhaps, the improvement of the Cumberland road, although I doubt even as to that. Considering all the others within the discretionary powers of the President, and believing that the peculiar reasons, if any, for continuing them in charge of the engineer corps have ceased, and that this corps has now, or will soon have, full employment within the rule above mentioned, I think it advisable that the following works should be transferred to the charge of the officers of the Topographical corps, and such transfer is directed accordingly, viz:

"1. Ohio and Mississippi rivers, between Pittsburg and New Orleans.

"2. Arkansas river.

"3. Upper Mississippi, from St. Louis, in Missouri, to Galena, in Illinois.

"4. Missouri river.

"5. Improvement of Mississippi river at St. Louis, (St. Louis harbor.)

"6. Ohio river above the falls.

"7. Light-house on Flynn's knoll.

"8. Improvement of the Red river and Hudson river.

"Regulation No. 878, in article 75, is hereby amended, by in-

serting the word 'preliminary' before the word 'surveys,' in the first line, so that it will read, 'The duties of the corps will consist in preliminary surveys for the defence of the frontier, inland and Atlantic, and of positions for fortifications,' &c.

(Signed) "J. C. SPENCER."

The project for the improvement of the Red river was transferred to the direction of the Topographical bureau on the 10th of March, 1841, by order of the Secretary of War, (Mr. Poinsett;) and the other eight projects of improvement, embraced in the foregoing order, were transferred to the direction of said bureau on the 18th of January, 1842.

Additional interrogatories on the part of the defendant to Jos. G. Totten, colonel of the corps of Engineers.

Interrogatory 1st. You state in your answer to defendant's second interrogatory, relative to the affairs and business committed by executive authority to the Engineer department, was "making, for a portion of the time," weekly reports to the Secretary of War of the proceedings in said department. Be pleased to state for what "portion of time" were said reports so made; and, with your answer, annex a copy of any one of said reports so made during the period specified in said second interrogatory.

Answer. The weekly reports referred to in deponent's answer to defendant's second interrogatory, were made in compliance with an order of the Secretary of War of March 24th, 1825, and except a few occasional omissions, they appear to have been made from the period at which Gen. Gratiot was appointed chief engineer until the month of July, 1838. A copy of one of these reports is appended, as required in the interrogatory.

No. 196.

Weekly report of the proceedings on each letter and paper referred to the Engineer department by the Secretary of War, during the week ending Saturday, the 15 of December, 1828.

From whom.	Date.	Subject of each letter or paper.	When referred.	When answered.	Substance of answers, and reasons for not.
Hon. J. Sargeant	Dec. 8	Cadet appointment for M. T. Wickham	Dec. 8	–	Receipt acknowledged.
Hon. M. C. Mitchel	4	Has received a letter from J. W. M. Beazeale, esq., in which he requests, if the engineer's report on the location of a western armory is not made, it may be withheld until he can answer the interrogatories put to him by them.	8	Dec. 8	Letter of Mr. Mitchel will be forwarded to the eng. officer in order to obtain the delay if practicable.
Hon. C. F. Mercer	6	Recommends W. B. Douglass for a cadet appointment	8	8	Receipt acknowledged.
Secretary of War	8	Refers a resolution of the H of R., directing the report of the proceedings in relation to the defence of the N. W. frontier, and to furnish an estimate of the cost to complete the road from Detroit to Fort Gratiot and Saganaw.	9	11	Estimate and report sent to Secretary of War.
Jos. Gales	2	Cadet appointment for Thos. Jones	9	9	Receipt acknowledged.
Hon. Willis Allston	8	Kenneth Rainer, for a cadet appointment	9	9	Ditto.
Hon. Lewis Maxwell	8	Asks if there is any cadet at West Point from Kenhawa district, of Va.	9	9	At present there is no cadet at W. P. from that dist.
Dixon Stansbury	8	Cadet appointment for M. S. Stansbury	9	9	Receipt acknowledged.
Hon. M. C. Sprigg	8	Cadet appointment for L. P. W. Balsh	9	9	Ditto.
Secretary of War	9	Refers a resolution of the H. of R., directing a copy of the report of the engineers on the survey of the Roanoke Inlet, &c.	10	9	Will be attended to.
Secretary of War	9	Refers a resolution of the H. of R., directing the report of the engineer appointed to examine the Alleghany river	10	9	Ditto.
Secretary of War	9	Refers a resolution of the H. of R , directing the last report of Casper W. Wever, Sup. of Cum. road to be laid before the house	10	10	Sent to Secretary of War.
Secretary of War	9	Refers a resolution of the H. of R., directing to be laid before the H. of R. the report of the board of engineers on			

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STATEMENT—Continued.

From whom.	Date.	Subject of each letter or paper.	When referred.	When answered.	Substance of answers, and reasons for not.
		making a canal between the Hiwassee and Coseaugah rivers, and also the report of Maj. Mason on the same subject - - - - - - - -	Dec. 10	Dec. 10	Sent to Secretary of War.
Secretary of War	Dec. 9	Refers a resolution of the H. of R., directing him to inform the House of the annual number of appointments in the army since 1820, and corps of engineers, and the number of cadets educated at West Point who have been commissioned - - - - - - - -	10	10	Returned to War Dep't.
Hon. Willis Alston	9	Recommends Mr. Rains for a cadet appointment -	10	10	Receipt acknowledged.
Alex. W. Foster	3	Cadet appointment for his son - - - - -	10	10	Ditto.
Hon. Jno. Sargeant	10	Cadet appointment for J. E. Blake - - - -	11	11	Ditto.
Noah B. Benedict	5	Cadet appointment for Bennet Benedict - -	11	11	Ditto.
Secretary of War	9	Refers a resolution of the Senate requesting a detailed statement of the amount expended by the Government in the different States since the adoption of the Constitution to the 1st of October last - - - -	12	-	Will be attended to.
Hon. A. Ward	3	Cadet appointment for Jno. Graham - - - -	12	12	Receipt acknowledged.
Hon. A. E. Wing	6	Requests the Secretary of War to furnish an estimate for the roads from Detroit to Fort Gratiot and to Saganaw, and thinks $30,000 will be sufficient.	12	12	Has been answered, estimate sent to Secretary of War.
Hon. D. Barton	11	Cadet appointment for Jesse Applegate - - -	12	12	Receipt acknowledged.
Francis H. Williamson	8	Cadet appointment for his son - - - - -	12	12	Ditto.
Hon. Jno. Blair	11	Requests the Secretary of War to reappoint J. D. McCann a cadet.	12	12	Cadet appointment sent to Hon. Jno. Blair.
Secretary of War	12	Refers a resolution of the Senate to communicate the report of the survey of Lt. Marks, and the estimate of same.	12	12	Will be attended to.
Hon. G. C. Washington	12	Cadet appointment for A. Thornton - - - -	13	13	Receipt acknowledged.

ENGINEER DEPARTMENT, *December* 15, 1828.

Jos. G. TOTTEN, *Col. and Chief Eng'r.*

Signed, C. GRATIOT, *Col. of Engineers*

Plaintiff's interrogatories.

Interrogatories on the part of the U. S. to Col. Joseph G. Totten.

1st interrogatory. On your being promoted to the office of colonel of engineers and chief engineer, or shortly after, were you not nominated to the Senate, by the President, for brevet brigadier general? If so, be pleased to state the grounds and reasons of your claim to such brevet.

Answer. In answer to the first cross interrogatory put in behalf of the United States, in the case of the U. States vs. Gratiot, I have to state that, soon after my arrival in Washington, under orders, to take charge of the engineer department, Mr. Poinsett, then Secretary of War, informed me that I had been, or that I would be, (I do not remember which,) nominated for the brevet of brigadier general. Whether that nomination ever was made, if made, what action, if any, was had thereon, I never enquired, and no evidence beyond mere rumor ever reached me. What grounds or reasons the Executive may [have] had for making the nomination is not for me to say. I never claimed the brevet—never asked for it, or insinuated a wish for it to any human being, neither then, before that period, nor since.

2d interrogatory. Were not the services set forth in your answer to the defendant's 2d interrogatory services which, under the general regulations of the army for the corps of engineers, it was the duty of the defendant, as chief of that corps, to perform? While the defendant was engaged in performing them, was any other duty imposed on him? Are they not now, to a considerable extent, the duties of your office, as chief of the corps of engineers? Are they considered by you as extra official, and such as would entitle you to receive extra compensation for? And have not your duties, as chief of the corps of engineers, been confined exclusively to the objects enumerated in the 888th paragraph of article 67 of the army regulations?

Answer. As to the services set forth in my answer to the defendant's 2d interrogatory, it is my opinion that, up to the 31 Dec'r, 1836, so far as they fall within the meaning of the 888th paragraph of the 67 article of the army regulations, published by order of the President in 1825, and from the 1 Jan'y, 1837, to the 6 Dec'r, 1838, as far as they fall within the meaning of article 44 of the general regulations of the army, authenticated on the 31st Dec., 1836, it was the duty of the defendant, as chief of the corps of engineers, to perform the same. As to some of these duties, it may be doubted however, whether the spirit of either of those regulations would include them; as for instance, directing the lithographic press; repairs on the N. W. executive building; and determining the northern boundary of the State of Ohio. While the defendant was engaged in performing the duties specified in said answer, I am not aware of any other duty in which he was engaged. It is

probable, however, that he was besides called on for his assistance on boards or commissions of officers, courts martial, courts of inquiry, and perhaps others of analogous nature. Several of the services set forth in the said answer to the defendant's interrogatory, have been removed from this office by order of the War Dep't, including nearly every work not of a military character, and do not now constitute a part of its duties; to what degree these changes have been made is particularly stated in other answers made by me to the direct interrogatories of the defendant. No duties now appertain to this office, which are regarded by me as extra official, or as entitling me to receive extra compensation. My present duties, as chief of the corps of engineers, are shown by the army regulations published on the 25th January, 1841, and specified by the regulations of the engineer department, published on the 22d of February, 1840.

3d. Interrogatory. Please state on what authority, or on whose recommendation, the improvements in the course of studies at the military academy were made, which are referred to in your answer to the defendant's 4th interrogatory; and whether you consider the chief of the corps of engineers to be entitled to any particular merit in consequence of such improvements? Or whether, in fact, they were not made by law and regulation adopted under recommendation and suggestions of the board of visitors at West Point?

Answer. I am not able to say on what authority, or by whose recommendation, the improvements in the course of studies at the military academy referred to in my answer to defendant's 4th interrogatory were made. But I believe them to have risen gradually out of the experience of the institution. The fruit, chiefly, of the system of inspection and examination, of able and watchful supervision on the part of the inspector and superintendent, and of zealous teaching.

4th Interrogatory. Since you have been chief of the corps of engineers, have you received any compensation over and above your regular pay and emoluments of colonel of engineers; and if so, what?

Answer. Since I have been chief of the corps of engineers, I have received no pay or compensation of any sort, over and above my regular pay and emoluments.

JOS. G. TOTTEN, *Col. and Chief Eng.*

DISTRICT OF COLUMBIA, *Washington county.*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Congressional document No. 6.

The defendant next gave in evidence a printed document of Congress, being document number six, of the House of Represen-

tatives, of the third session of the twenty-seventh Congress, being on the subject of extra pay to army officers, which document is to be used in all courts in which this cause may be pending, by consent of the parties, in the form in which it has been published, as if spread on the record.

Depositions of witnesses on record in S. C.

The defendant next gave in evidence the depositions of witnesses and documents, which are already spread upon the record of the Supreme Court of the United States, as the record was removed from this court; and by the consent of parties, all the depositions and documents spread upon the record as it is in that court, are to be considered as incorporated in this bill of exceptions. The said depositions having no reference to the performance of the services, in the account attached to Fowler's deposition, except to prove the usage in relation to extra allowances, and only for that purpose.

The defendant next gave in evidence, a deposition of James C. Wilson, with an account annexed thereto, which is the same as the account annexed to the deposition of Benjamin Fowler, and is therefore not again inserted, which deposition is in the words following:

James C. Wilson's deposition.

Interrogatories propounded on the part of the defendant, to James C. Wilson, a clerk in the engineer department.

Interrogatory 1st. What office or station do you fill, and how long have you filled the same?

Answer. I was appointed clerk in the engineer department, on the 1st of October, 1827, and continue such at this time, January, 1842.

Interrogatory 2d. Examine the record books and other documents belonging to the engineer department, and now there on file, and state therefrom as nearly as you can, or from your knowledge of the facts, whether the services charged by Charles Gratiot, in his account hereto appended, have been performed by the said Gratiot.

Answer. From my position of clerk under General Gratiot, during the whole period that he was the chief engineer, and the daily observation I made of the business before said department, I state, to the best of my knowledge and belief, that he did perform the services presented in the 12 items charged in the said account. My more immediate province was that of the desk, where the record and file named in the 11th item were kept, and I state that the charge is correct to the best of my belief. The records and files of my desk do not relate to this correspondence with the officers of the military academy, but in a very limited degree; the great mass of the correspondence being involved in the appointing

power, or in other words, in relation to applications for, and the appointment of, cadets for the military academy.

Interrogatory 3d. State, from your own knowledge of the fact, whether the office styled "Engineer department," at Washington city, was not, from 1827 to 1839, as also from the routine of practice in it, one of the bureaux of *record*, *file* and *correspondence* of the Department of War?

Answer. I always understood such to be the fact, and never heard a suggestion to the contrary; indeed, I may say that I know such to be the fact, from the reference almost daily of papers, letters, &c., for the action of the chief engineer, from the War Department.

JAMES C. WILSON.

DISTRICT OF COLUMBIA, *Washington county, ss.*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., J. P. [SEAL.]

Mr. Spencer's deposition.

The defendant next gave in evidence to the jury, a deposition of John C. Spencer, Secretary of War, with certain documents thereto annexed, which deposition and documents are in the words following:

Interrogatories propounded to the Secretary of War on the part of the defendant.

Interrogatory 1st. What office or station do you fill, and how long have you filled the same?

Answer. I am Secretary of War, and have been since the 11th of October, 1841.

Int. 2d. State, from the routine of practice in the War Department, whether the office or bureau in Washington city, styled "Engineer department," is an independent "department," or a bureau of the War Department, for the despatch of part of the ordinary ministerial duties appertaining to the administrative business devolved on the said War Department; and state also, whether the said engineer department is not one of the bureaux of *record*, *file* and *correspondence*, of the said War Department?

Answer. It is a bureau of the War Department, and is charged with such ministerial and administrative duties as may be assigned to it by the Secretary of War. Papers are filed in that bureau, and it answers letters addressed to the department when required. It is as much an office for keeping records as any other bureau.

Please furnish certified copies of the following regulations and decisions, viz:

1. Regulation, 10th Aug., 1828, allowing \$1 $\frac{25}{100}$, to officers detailed to perform bureau duty.

2. Regulation of the 27th July, 1821, allowing double rations to the chief engineer.

3. Decision of President Monroe of the 12 June, 1822, in the case of Alexander Macomb, col. of engineers, and br. gen. by brevet, on his claim for brevet pay and emoluments.

Certified copy of the letter addressed to Col. William McRee and Maj. S. Thayer, on the 20th April, 1815, the same will be found recorded in military book of the Dep't of War, pages 81-82.

Regulation, 10*th August*, 1818.

Regulation.

The quartermaster general will be allowed quarters and fuel agreeably to his rank; and he will, on requisition, furnish the same to the commissary general, and the chief of the ordnance department at Washington, agreeably to their respective ranks; and to the surgeon general the same that was allowed to the physician and surgeon general under former regulations. The reason for the allowance to the chief of the engineers, and the adjutant and inspector general in lieu of quarters, no longer existing since the establishment of the quartermaster's department, at the termination of the present quarter such allowance will cease; and the quartermaster general will, on requisition, furnish them with fuel and quarters agreeably to their respective rank.

Officers detailed to perform duties in the office of chief engineer, quartermaster general, adjutant and inspector general, or the chief of the ordnance will be allowed, while performing such duties, at the rate of $\$1\ \frac{25}{100}$ per diem in addition to their usual pay and emoluments. The quartermaster general will allow officers so detailed, fuel and quarters agreeably to their respective ranks. If the quartermaster general cannot furnish the above officers with public quarters, he will allow them at the rate of $12 per month for each room to which they are entitled.

J. C. CALHOUN.

Department of War, 10*th August*, 1818.

Regulation, 27*th July*, 1821.

Department of War, *July* 27, 1821.

Sir: The quartermaster general, commissary general of subsistence, the colonel of engineers, and the chief of the ordnance department, while stationed at the Seat of Government, will be allowed double rations from this date.

J. C. CALHOUN.

Paymaster General and Rich'd Cutts, esq., 2*d Comptr.*

Letter to Col. McRee.

Department of War, *April* 20*th*, 1815.

Sir: In consideration of the advantages which the United States may derive by the increased experience and scientific improve-

ment of its officers, the President is pleased to afford you an opportunity for professional improvement. You will report yourself to the Hon. the Secretary of the Navy for orders to embark on board the squadron, which is about to sail for the Mediterranean. When your services shall no longer be required with the squadron, you will proceed to the continent, and prosecute those enquiries and examinations calculated for your improvement in the military art. The military schools, work shops, and arsenals, the canals and harbors, the fortifications, especially those for maritime defence, will claim your particular attention. You will be provided with funds for the collection of such books, maps, and instruments for the military academy as may be hereafter directed by the War Department, or the commander of the corps of engineers. To enable the Government to communicate its orders with certainty and despatch, you will occasionally advise the American minister in France of your place of residence. To defray extra expenses, you will be allowed double rations during the period of your tour, and will receive from the first day of the present month the pay and emoluments of that rank to which your brevet entitles you.

A. J. DALLAS.

Lieut. Col. WM. MCREE, *Corps of Engineers.*

Letter to Major Thayer.

DEPARTMENT OF WAR, *April* 20, 1815.

SIR: In consideration of the advantages which the United States may derive by the increased experience and scientific improvement of its officers, the President is pleased to afford you an opportunity for professional improvement. You will report yourself to the Hon. the Secretary of the Navy for orders to embark on board the squadron, which is about to sail for the Mediterranean. When your services shall no longer be required with the squadron, you will proceed to the continent and prosecute those enquiries and examinations calculated for your improvement in the military art. The military schools, work shops and arsenals, the canals and harbors, the fortifications, especially those for maritime defence, will claim your particular attention. You will be provided with funds for the collection of such books, maps, and instruments for the military academy, as may be hereafter directed by the War Department, or the commander of the corps of engineers. To enable the Government to communicate its orders with certainty and despatch, you will occasionally advise the American Minister in France of your place of residence. To defray extra expenses, you will be allowed double rations during the period of your tour, and will receive from the date of your commission the pay and emoluments of that rank to which your brevet entitles you.

A. J. DALLAS.

Major S. THAYER, *U. S. Corps of Engineers.*

I, John C. Spencer, Secretary of War, hereby certify that the foregoing four documents, dated "Department of War, 10th August, 1818, July 27, 1821, and April 20, 1815," are correct copies from the records of said Department.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said Department to be affixed, on the fourth day of March, in the year of our Lord one thousand eight hundred and forty-two. [L. S.]

J. C. SPENCER.

President Monroe's decision.

The nature and extent of Gen. McComb's command, taking into view the military academy at West Point, and the topographical engineers which are attached to his command as chief of the corps of engineers, his brevet pay appears to be clearly within the meaning of the laws applicable to the case. The allowance of the pay of a brigadier to the assistant engineer, Gen. Bernard, is an additional reason in favor of the allowance.

(Signed,) JAMES MONROE.

June 12, 1822.

The brevet pay and emoluments of brigadier will commence from the time that he was arranged to his present command.

(Signed) J. M.

The above is a true copy from the original on file in the Pay department.

N. TOWSON, *P. M. G.*

February 21, 1842.

Plaintiff's Interrogatories.

Interrogatories on the part of the United States to the Hon. John C. Spencer, Secretary of War.

1. Be pleased to examine the records of your office, and state from them at what time, and how, the "engineer department" was established, and made a bureau of the War Department; what duties were assigned to such department or bureau; and to whom was the charge of such bureau committed. Please furnish copies of the order or regulations establishing such department or bureau, and prescribing the duties devolved upon it; and state what duties, if any other than those so prescribed, appear from the said records to have been required to be performed by the chief engineer.

2d. Be pleased to look at your answer to the defendant's second interrogatory propounded to you to examine his account against the U. States contained in the deposition of Benjamin Fowler, a deponent in this cause; to examine the defendant's account, a copy of which is hereto annexed, for extra services in conducting the affairs connected with the civil works of internal improvements carried on by the United States, and also to examine the army reg-

ulations of 1825, in relation to the engineer department. Be pleased then to state whether there is among the records of the War Department, or elsewhere to your knowledge, any evidence of any contract, expressed or implied, by which the defendant was entitled to receive extra compensation for the services charged in the said two accounts, or for any of said services; and if there be such evidence, state it, and the service or services to which the evidence is applicable.

Answer to the first of the foregoing interrogatories. It appears by the records of the Department of War, that on the 3d of April, 1818, (see doc. No. 1, annexed,) the head quarters of the corps of engineers were established at the city of Washington, when the bureau became an office of record and deposit; and under the supervision of the Secretary of War, the officer in charge became a subordinate official corresponding officer for engineer and such other duties as the facilities of the service might require, such officer acting under the direct orders, regulations, or general instructions of the Secretary of War in all cases, except in the mere routine of engineer details of officers and their assignments for duty. It also appears that J. G Swift was colonel of the corps at the time the order herein referred to was given, and was first placed in charge of the bureau near the War Department; since which, it appears several engineer officers have been on this duty, generally the senior of the corps, when not on other duty. The specific duties assigned to the bureau of engineers, other than those growing out of the constantly varying incidents of service under the direction of the Secretary of War, are found in the general regulations of the army, issued July, 1821, and March 1, 1825, under the head of "Engineer department," article 67, page 165 of the first, and page 167 of the second, and the army regulations, issued December 31, 1836, page 156; printed copies of which regulations, verified by the seal of the Department, are herewith furnished.

Answer to the second interrogatory. I have directed the records and files of the Department of War to be searched for any evidence of any contract, express or implied, that General Gratiot was to receive extra compensation for the services charged by him in the said accounts, or any of them, and the proper officers report that no such evidence is to be found, except what may be derived from the papers furnished in answer to the direct and cross interrogatories; which report I verily believe to be true, and adopt as my answer to this interrogatory.

J. C. SPENCER.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

On this sixteenth day of March, in the year eighteen hundred and forty-two, personally appeared before me, the subscriber, one of the justices of the peace for the county aforesaid, the hon. John C. Spencer, who made oath on the Holy Evangely of Almighty

God, that the answers to the foregoing interrogatories are true as stated, to the best of his knowledge and belief.

Subscribed and sworn before me,

N. CALLAN, Jr., *J. P.* [L. S.]

Defendant's cross interrogatory.

Cross interrogatory by defendant to J. C. Spencer, Secretary of War.

You state in answer to the first cross interrogatory on the part of the United States, that "It appears by the records of the Department of War, that on the 3d of April, 1818, the head quarters of the corps of engineers were established at the city of Washington, when the bureau became an office of record and deposit; and under the supervision of the Secretary of War, the officer in charge became a subordinate official corresponding officer for the engineer and such other duties as the facilities of the service might require—such officer acting under the direct orders, regulations, or general instructions of the Secretary of War, in all cases, except in the mere routine of engineer details of officers and their assignments for duty." Should the colonel of the corps of engineers be ordered by the President of the United States to establish his head quarters permanently, or otherwise, out of the city of Washington, say New Orleans, Holton Barracks, Council Bluff, or anywhere else out of the District of Columbia, would the records, &c., so deposited in the bureau of the Department of War, commonly styled "Engineer department," also be removed and made to follow the said colonel of the corps of engineers, as an appendage belonging to, and inseparable from, his head quarters, wherever established, either permanently or temporarily? If you answer that the said records, &c., could not be removed from the Department of War, state the reason.

In answer to the preceding interrogatory, I have to state, that I consider the colonel of engineers, as well as all other army officers, liable to any military and other duty, not incompatible with the character of an officer and a gentleman, that the service may require and the President direct. Public records and papers are not the property of the incumbent of any office. All books, maps, records, and papers, and other property in the bureaux of this Department, are subject to the orders and directions of the Secretary of War, for the accommodation and facilities of the public service; they are considered part of the records of this Department, and as such, are kept as near the War Office as circumstances will permit.

J. C. SPENCER.

The United States to Charles Gratiot, Dr.

For his extra services in conducting the affairs connected with the civil works of internal improvement carried on by the United States; and in conducting also the affairs connected with the execution of the act of Congress, of July 14, 1832, "to provide for the

taking of certain observations, preparatory to the adjustment of the northern boundary line of the State of Ohio," referred to the engineer bureau for execution by the Executive of the United States, and other extra official services connected with the aforesaid items of charge, and which did not constitute any part of his duties as a military officer, but which properly appertained to the duties and functions of civil engineering, and were performed under an understood or implied contract with the War Department, under the sanction and authority of the President of the United States, to be compensated therefor over and above my official pay and emoluments, at a reasonable rate of compensation, according to the established usage of the Department in analogous cases, from the 30th day of July, 1828, to the 6th day of December, 1838, both days included —10 years and 130 days, at $3,600 per annum, that being the pay granted to John S. Sullivan, David Shriver, Jas. Geddes, and Nathan S. Roberts, esq'rs, civil engineers, employed under the act of 30th April, 1824, entitled "An act to procure the necessary surveys, plans, and estimates upon the subject of roads and canals;" and *less* than the *extra* pay of Captain Andrew Talcott, of the corps of engineers, while he was employed under the orders of the engineer bureau, in executing the act of the 14th of July, 1832, above referred to - - - $37,282 19

C. GRATIOT.

WASHINGTON, D. C., *March* 23, 1841.

Order.—April 3, 1818.—*No.* 1.

DEPARTMENT OF WAR, *April* 3*d*, 1818.

SIR: The President having directed that the head quarters of the engineer department be fixed at the Seat of Government, you will make your arrangements accordingly. As soon as practicable, you will order the distribution of the officers of the engineer corps in such manner as the service of surveying sites, and the superintending of the construction of works of defence may require. Until you can be otherwise accommodated, you will procure suitable rooms for officers.

I have the honor to be, &c.

JOHN C. CALHOUN.

Brig. Gen. JOSEPH G. SWIFT,
City of Washington.

April 7, 1818.—*No.* 2.

DEPARTMENT OF WAR,
April 7, 1818, *Engineer Department.*

Under the orders of the Executive, the engineer department is charged with the directions of the fortifications; the duties of the department will comprise—

1st. Military reconnoiterings, embracing surveys and examinations of the country, and surveys of sites that may be designated for defence, with maps and plans of the same. These reconnoiterings, surveys, maps, and plans, will be made from time to time, by such engineers as may be designated for those duties.

2d. Construction and repairs of works. See constructions and disbursements, and duties of engineers.

3d. Inspections, which shall be made of all works when completed, by such engineer as may be designated by the chief engineer. Occasional inspections may be ordered upon works, during their construction, if deemed necessary.

4. Correspondence, including reports of inspections and of reconnoiterings and surveys, accompanied by maps, plans and estimates. Returns of public property in the possession of engineers, to be made to the engineer department on the 30th of June and 31st of December in every year. Summaries of reports of reconnoiterings and surveys, to be forwarded through the War Department, for the use of generals commanding divisions.

5. General direction of disbursements, which will embrace purchases of sites and materials, hiring workmen, purchases of books, maps, and instruments, and contracts for the supplies of materials and for workmanship. Detail.

Constructions and disbursements. There shall be detailed an engineer to superintend the construction of fortifications, and as many assistants as may be deemed necessary.

Duties of engineers. Plans of the work which it is contemplated to construct, and such directions as may be thought necessary, shall be transmitted to the superintending engineer, with an order to construct the work agreeably thereto—and the superintending engineer shall be held responsible for the faithful execution of the work, agreeably to the plan. The superintending engineer shall make requisitions upon the agent of fortifications for such materials and workmen as he may deem necessary to construct the work. An inspection of the materials shall be made by the engineer or assistant, as to quantity, quality, and price, at the time the materials are delivered. Upon this inspection the materials may be received or rejected by the engineer. If received, a receipt for the materials shall be endorsed by the engineer upon the bills of parcels, which shall be authority for the agent's disbursement.

Agents. There shall be appointed as many agents of fortifications

as the service may require, who shall give bond for the faithful discharge of their duties.

Duty of agents. They shall be governed by the orders of the engineer department in the disbursement of the money placed in their hands, and by the following instructions in keeping and rendering their accounts.

1st. For all articles purchased, they will take bills of parcels, with fair and explicit receipts of the party from whom the purchase is made; and each bill, before payment, must be certified by the superintending engineer or assistant, that the article charged has been received. It results that the certificate must in all cases be dated.

2d. For all labor performed, a roll must be made out monthly, under the direction of the engineer or other officer superintending, in which each person's name must be inserted—the time he commenced and ended—the price per day, and the whole amount due him, with his receipt for the amount opposite; and the roll must also be certified by the officer above named. If soldiers are employed, a separate roll must be made out, as per established regulations of the Secretary of War, of which the officers are apprized.

3d. A roll must also be made out monthly, and certified by the engineer or officer superintending, for the pay of mechanics employed as pointed out in the case of labor performed. From the foregoing vouchers, abstracts are to be made out, in [which] they are to be entered according to their respective dates, and numbered in regular progression.

1st. "Abstract of articles purchased," to include all bills for articles purchased.

2d. "Abstract of labor performed," to include the rolls receipted for as directed.

3d. "Abstract of pay of mechanics," to include all charges under that head; and,

4th. "Abstract of contingent expenses," to include all other expenditures on account of fortifications not above provided for.

These abstracts, with the vouchers regularly numbered and filed with each respectively, are to be forwarded to this office, when the agent's accounts are directed to be rendered for settlement, accompanied by an account current, in which their respective amounts are to be entered to the debit of the United States, and all moneys previously received are to be credited, and the balance due to or from the United States will be stated.

As a general remark it must be observed, that, in all cases, the payment of the agent must be accompanied by the certificate of the engineer, or officer superintending the fortifications; and as much depends upon the correctness of the agent's accounts, it will be expected that the forms and instructions made known will be strictly attended to.

Very respectfully, your obedient servant,

JOHN C. CALHOUN.

Brig. Gen. JOSEPH G. SWIFT,
Now at the city of Washington.

I, John C. Spencer, Secretary of War, hereby certify that the foregoing copy of an order, dated Department of War, April 3d, 1818, and copy of regulations, dated April 7, 1818, are true copies from the records of said department.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said department to be affixed, on this fifth [L. S.] day of March, in the year of our Lord one thousand eight hundred and forty-two.

JOHN C. SPENCER.

Until further ordered, the chief engineer, while resident at Washington city, will be allowed at the rate of nine hundred and twelve dollars a year, in lieu of fuel and quarters. He will also receive double rations. The officers who compose the board of engineers will be allowed four dollars and fifty cents a day, in lieu of fuel, quarters, transportation, and the per diem allowance for reconnoitering, while engaged in the duties assigned by the board. The officer whom General Swift may detail to aid in performing the duties of the engineering department, will be allowed one dollar and fifty cents per day in lieu of quarters and fuel.

(Signed) J. C. CALHOUN.

Received by the accounting officers, May 12, 1818.

A true copy: ALBION K. PARRIS,
Second Comptroller.

WAR DEPARTMENT, *August* 1, 1828.

Regulation.—Each officer of the corps of engineers charged with the construction of a fortification, or having a separate command, shall hereafter be entitled to receive double rations, in the same manner as is allowed to officers of other arms of the service commanding separate posts or arsenals.

(Signed) P. B. PORTER.

A true copy, from the original on file in the paymaster general's office.

N. TOWSON, *P. M. G.*

[NOTE.—The printed copies of the general regulations of the army, issued July, 1821, March 1, 1825, and December 31, 1836, are not on file as part of Mr. Spencer's deposition, as therein referred to. The two papers last entered on the record, dated May 12, 1818, and Aug. 1, 1828, seem to have no connection with the deposition as filed. I would infer from the plaintiff's 2d interrogatory, and from the confused manner in which the different parts in the original are jumbled together, that there is a hiatus in the deposition as offered in evidence, and set forth in the foregoing record.

J. GAMBLE, *Clk.*]

The defendant next gave in evidence to the jury a deposition of William B. Lewis, with papers and documents attached thereto; which deposition, with the documents, is in the words following:

Major Lewis' deposition.

Interrogatories propounded by the defendant to Wm. B. Lewis.

1st. What office or station do you fill, and how long have you filled the same?

2d. Examine the records of your office, and furnish therefrom a statement of the monthly pay and emoluments which Charles Gratiot, late colonel of engineers and brigadier general by brevet, was entitled to receive, from the 1st April, 1836, to the 6th December, 1838, both days included, and which would have been paid to him monthly, on demand, but for the stoppage of the same for the use of the United States, and which was by requisition 3448, of the 17 December, 1838, drawn on requisition 710, of the 13th December, 1838, and received from the 2d auditor's office, amounting in the aggregate to $10,763 99.

3d. Examine the files of your office, and furnish therefrom a copy of Charles Gratiot's pay account for March, 1829, it being the first of the duplicate account of said Gratiot, presented by Paymaster T. P. Andrews, and passed to his credit on the settlement of his account which included that item of charge. A copy of the voucher then submitted by said Andrews, and reported on, is the one now called for, and not a copy of the duplicate retained by Paymaster Andrews and kept in his private files. And state further, whether the uniform practice in the 2d auditor's office is not, on the presentation of an account for retrospective pay, to pass the same only on the authority of the Secretary of War or 2d comptroller. And state what have been the exceptions, if any, to the rule and practice, since you have held the office of 2d auditor.

4th. Examine the files of your office, and furnish therefrom a copy of one of the vouchers on which Lieut. A. Mordecai, of the corps of engineers, received the compensation of $1 25 per diem for his services as assistant to the chief engineer in the Engineer department, Washington, D. C., from the 30 April, 1828, to the 24 September, 1830; also a copy of one of the vouchers on which Lieut. W. H. C. Bartlett, of the same corps, received $1 25 per diem for the same service, and at the same place, from the 2d June, 1832, to the 30th September, 1833.

5th. Examine the records of your office, and furnish therefrom a statement of the brevet officers of the corps of engineers to whom retrospective brevet pay has been allowed during the year 1841, for what service or command, and the amount so paid to each officer.

1st. To the first interrogatory the deponent, William B. Lewis, replies: That he is now Second Auditor of the Treasury Department, which office he has held since the 22d of March, 1829.

2d. To the second interrogatory the same deponent answers: That an examination has been made of the records of the 2d auditor's office, and the following statement prepared, shewing the monthly pay and emoluments to which Charles Gratiot was entitled as colonel of engineers and brigadier general by brevet, from the 1st April, 1836, to the 6th December, 1838, both days included, as follows:

Statement of General Gratiot's monthly pay and emoluments.

	1836.	1837.	1838.	
January -	-	336 90	336 90	
February -	-	320 70	320 70	
March -	-	336 90	336 90	
April -	331 50	331 50	331 50	
May -	336 90	336 90	336 90	
June -	331 50	331 50	331 50	
July -	336 90	336 90	339 50	
August -	336 90	336 90	339 90	
September	331 50	331 50	334 50	
October -	336 90	336 90	339 90	
November	331 50	331 50	334 50	
December	336 90	336 90	65 79	To 6th Dec. '38, inclusive.
Dollars,	3,010 50	4,005 00	3,748 49	Aggregate, $10,763 99.

And that the above several sums would have been paid to the said Charles Gratiot monthly, on demand, but for the stoppage of the same under the act of 25 January, 1828. Which sum, so stopped, amounted to $10,763 99, was transferred to the credit of said Gratiot on the books of the third auditor of the Treasury, by a *requision* No. 710, dated 13 December, 1838, and recorded in the second auditor's office.

3d. In answer to the third interrogatory the deponent declares: That, after repeated searches in the files of the office, he has been unable to find the pay account of Charles Gratiot for March, 1829, in the place where it should be filed. This, in all probability, has arisen from its having been heretofore referred to, and when returned to the files was misplaced in some other settlement than that to which it belonged. The account is believed to be still in the office, but to make a thorough search for it, without any guiding clue, would require much labor and a long time. The deponent further states, that the usage of the 2d auditor's office, on the presentation of an account for retrospective pay or allowances, not expressly authorised by law or regulations, is to require the special sanction of the Secretary of War or 2d comptroller. The only exception to this usage the deponent is at present aware of, is when an officer claims retrospectively his brevet pay and emoluments for the command of troops, and supports his claim by satisfactory proof from the rolls of the army, that his command was actually "according to his brevet rank," as required by the act of 16th April, 1818, the claim is allowed without any other sanction.

4th. In answer to the fourth interrogatory, the deponent presents the following copy of one of the vouchers on which Lieut. A. Mordecai, of the corps of engineers, received the compensation of $1 25 per diem for his services as assistant to the chief engineer in the engineer [department] at Washington, D. C., to wit:

Lieut. Mordecai's account.

"Dr. The United States,

To Lieut. Alfred Mordecai.

For per diem allowance while on bureau duty in the office of the chief engineer at Washington city, from the 1st March, 1829, to the 31st March, 1829, 31 days, at 125 cents - - - - - - - $38 75

I certify, on honor, that the above account is correct; that I have not been on furlough for any part of the time charged, and that I am not indebted to the United States on any account whatever.

A. MORDECAI, *Lt. eng's.*"

Received, Washington, March 31, 1829, of Major Trueman Cross, quartermaster U. S. army, the sum of thirty-eight dollars and seventy-five cents, in full of the above account. (Signed in duplicate.)

A. MORDECAI, *Lt. eng's.*

Also the following copy of one of the vouchers on which Lieut. W. H. C. Bartlett, of the same corps, received $1 25 per diem for the same service, and at the same place, to wit:

Lieut. Bartlett's account.

Dr. The United States,

To Wm. H. C. Bartlett, Lt. of eng's.

For per diem allowance while on bureau duty in the office of the chief engineer at Washington city, from the 2d June, 1832, to the 30 June, 1832, 29 days, at 125 cents $36 25

I certify, on honor, that the above account is correct; that I have not been on furlough for any part of the time charged, and that I am not in arrears to the United States on any account whatever.

WM. H. C. BARTLETT,
Lieut. of eng's.

Received, Washington, July 25, 1832, of Major Trueman Cross, quartermaster United States army, the sum of thirty-six dollars and twenty-five cents, in full of the above account. (Signed in duplicate.)

WM. H. C. BARTLETT,
Lieut. of eng's.

And that the above two officers received the same compensation; the first from the 30 April, 1828, to the 24th September, 1830, and the second from the 2d June, 1832, to 30 September, 1833.

5th. To the fifth interrogatory the deponent answers: That the records of this office have been examined, and the following statement extracted therefrom, of brevet officers of the corps of engineers to whom retrospective brevet pay has been allowed during the year 1841; shewing the service or command for which allowed, and the amount so paid, to wit:

J. G. Totten, colonel engineers, from 1 March, 1825, to 7 December, 1833, in charge of Forts Adams, Hamilton, Delaware, &c., allowed January, 1841 - - - - $4,240 58

John L. Smith, brevet major engineers, from 29 August, 1830, to 25 April, 1833, "in charge of works in New York harbor," allowed 23 February, 1841 - - - - $1,494 75

W. B. LEWIS.

Additional interrogatories propounded by defendant to W. B. Lewis, 2d Auditor of the Treasury.

Additional interrogatories by defendant.

1st. You state in your answer to defendant's third interrogatory, "that after repeated searches in the files of the office, he [you] has been unable to find the pay account of Charles Gratiot, for March, 1829, in the place where it should be filed." Please state the period when the search for the said account was first made, and it was discovered not to be "in the place where it should be filed." State also whether the paper marked "P," appended to the 3d auditor's report of the 5th of April, 1841, on Charles Gratiot's account of the 23d March, 1841, to which is annexed your certificate in the following words, namely: "I certify that the above is a true copy taken from the account of General Gratiot as passed in this office. W. B. Lewis, 2d auditor, 5 April, 1841," is a *true copy* in every particular of the pay account which "passed" your office, and should now be there on file.

2d. Were the accounts for transportation of officers' baggage settled in your office during the years 1815, 1816, and 1817, or are accounts for transportation of baggage for those years on file in your office? If so, please state what allowances for transportation of officers' baggage were made to William McRee and Major Sylvanus Thayer, both of the corps of engineers during the years 1815, '16, and 17; and please state further for what service they were allowed said transportation money.

3d. Capt. T. Hunt, of the infantry, in the service of the U. S., was employed in the Subsistence bureau in Washington as an assistant or bureau officer, and received compensation therefor. Please state the period when he was admitted to claim the said allowance, on what authority or decision, and the amount he received in fulfilment of said decision.

4. Please examine the files of your office, and state therefrom, whether Gen. Jos. G. Swift, colonel of the corps of engineers, and brevet brigadier general, received the pay and emoluments of his brevet rank prior to the 7th of April, 1818. If your answer is in the affirmative, please annex to your answer, as part thereof, a copy of one of his pay accounts as it passed your office.

5th. State also whether Major J. D. Graham, of the corps of topographical engineers, received his pay and emoluments as such, during the last quarter of 1840, and the year 1841. If so, please annex as part of your answer a copy of one his pay accounts as it passed your office during that period.

6th. State further, whether Lieut. S. Tuttle, of the corps of engineers, received double rations from the 25th June, 1829, to the 31st May, 1831. If your answer is in the affirmative, please annex, as part of your answer, one of said Tuttle's accounts as it passed your office during the period stated above.

7th. State whether Major W. McRee, colonel by brevet, and Capt. Sylvanus Thayer, major by brevet, and both of the corps of engineers, received their brevet pay and emoluments during the years 1816 and 1817, or for any part of the time. If your answer is in the affirmative, please annex as part of your answer a copy of one of their pay accounts, on which they received the pay and emoluments of their brevet rank.

1st. In answer to the first interrogatory, the deponent, W. B. Lewis, states that he has no knowledge of any unsuccessful search for the *original* pay account of Charles Gratiot, for March, 1829, prior to the time when the copy marked "P," referred to in the first interrogatory, was obtained from this office. And the deponent further states that the words "as passed in this office," contained in his certificate annexed to said copy "marked P," and "appended to the 3d auditor's report of 5th April, 1841," had reference to the *amount* of that account, "as passed in this office," to the credit of the paymaster, and not to the details or remarks on the face of it as being "a true copy," of the *original* account, inasmuch as said *original*, not being found on the file where it belongs, the copy marked "P" was made from the pay account retained by the paymaster.

2d. To the second interrogatory, the deponent answers, that the accounts for the transportation of officer's baggage, during the years 1815, 1816, and a part of 1817, were adjusted in this office, and the settlements made subsequent to the date of the act of 3d March, 1817, chap. 45, are filed in this office; and that an examination of the accounts of Col. Wm. McRee and Major Sylvanus Thayer, both of the corps of engineers, shows that under orders of the Hon. A. J. Dallas, Secretary of War, dated 20th April, 1815, they proceeded to Europe to prosecute "enquiries calculated for their improvement in the military art," and "for the collection of books, maps and instruments for the military academy," and that on their return to

the United States, in obedience to an order from the adjutant and inspector general of 19th November, 1816, they received respectively $100 and $100 71 for their transportation from Havre de Grace, in France, to New York.

3d. In answer to this interrogatory, the deponent states that Capt. T. Hunt, of the 5th regiment of infantry, commenced his bureau duty in the office of the commissary general of subsistence on the 20th of October, 1821, in obedience to an order of the commissary general of the 25th August, 1821, and that he received on the 23d November, 1831, the sum of $1,341 $\frac{25}{100}$ for his per diem of $1 $\frac{25}{100}$ from the 20th October, 1821, to the 26th September, 1824, allowed by an order of the Secretary of War, dated 21st November, 1831, of which the following is a copy: "Let Capt. Hunt be allowed $1 25 per day from the commencement of his service in the commissary general of subsistence office, until the allowance made him for that purpose by the Secretary of War took effect.

"L. C.

"*Nov.* 21, 1831."

4th, 5th, 6th and 7th. In answer to the fourth, fifth, sixth, and seventh interrogatories, the deponent states, that the required examination having been made of the files of this office, it is ascertained: 1st. Brevet Brigadier General Jos. G. Swift, of the corps of engineers, did receive the pay and emoluments of his brevet rank "prior to the 7th April, 1818," as will be seen by the copy of one of his pay accounts, marked A, hereunto annexed as part of this answer. 2d. That Major J. D. Graham, of the corps of topographical engineers received his pay and emoluments as such in the year 1841, as shewn by the copy of one of his pay accounts, marked B, hereunto annexed as part of this answer. 3d. That Lieut. S. Tuttle, of the corps of engineers, received double rations from the 25th June, 1829, to the 2d May, 1831, in evidence of which, one of his pay accounts, marked C, is hereto annexed as part of this answer. And 4th, that Major W. McRee, colonel by brevet, and Capt. Sylvanus Thayer, major by brevet, both of the corps of engineers, received the pay and emoluments of their brevet rank for part of the years 1816 and 1817, as will appear by their respective accounts, marked D and E, as passed to their credit on the books of this office, and hereunto annexed as part of this answer.

W. B. LEWIS.

Gen. Swift's account.

A.

The United States,
To Brig. Genl. Joseph G. Swift, Chief Engineer. Dr.

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.
	From.	To.	Months.	Days.		
	1817.	1817.			dols. cts.	dols. cts.
Pay—						
For myself - -	1 January	31 Octob'r	10	–	104 00	1,040 00
For 3 private servants not soldiers -	1 do	31 do	10	–	15 00	150 00
Forage—						
For 3 horses -	1 July	31 do	4	–	24 00	96 00
Clothing—						
For 3 private servants not soldiers -	1 January	31 Octob'r	10	–	9 30	93 00

	No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
Subsistence—					Cts.	
For myself - -	1 January	31 Octob'r	304	24	7296	– 20	1,459 20
For 3 private servants not soldiers -	1 January	31 Octob'r	304	3	912	– 20	182 40
						$3,020 60

Remarks.—Last paid by Lieut. Thomas J. Leslie, P. M., Corps of Engineers.

I do hereby certify and attest upon my honor, that the foregoing account, amounting to three thousand and twenty dollars and sixty cents, is accurate and just; that I have not received, nor drawn rations or forage in kind from the United States, or received money in lieu thereof, for or during any part of the time therein charged; that I actually employed and kept in service the number of horses and servants charged for (the servants not belonging to the army); and that I did not, during the term so charged, keep or employ as waiters or servants, soldiers from the line of the army.

Signed duplicates hereof.

J. G. SWIFT, *B. G.*

I certify that the calculations and additions of this account have been by me examined, and that the sum of three thousand and twenty dollars and sixty cents appears to be due thereon.

Signed duplicates hereof.

THOMAS J. LESLIE,
Lieut. and Paymaster Corps of Engineers.

Received of Lieut. Thomas J. Leslie, paymaster of the corps of engineers, this 31st day of October, 1817, the sum of three thousand and twenty dollars and sixty cents, being my pay, subsistence, forage, and clothing, in full from the first of January, 1817, to the thirty-first of October, 1817, having signed duplicates hereof.

J. G. SWIFT, *B. G.*

Pay - - - - - - -	$1,190 00
Subsistence - - - - - -	1,641 60
Forage - - - - - -	96 00
Clothing - - - - - -	93 00
	$3,020 $\frac{60}{100}$

W. B. LEWIS.

Maj. Graham's account.

B.

The United States,
To Major J. D. Graham, U. S. Topl. Engineers. Dr.

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.
	From.	To.	Months.	Days.		
	1841.	1841.			dols. cts.	dolls. cts.
Pay—						
For myself - -	1 April	30 April	one	–	60 00	60 00
For 2 private servants not soldiers -	do	do	one	–	16 00	16 00
Clothing—						
For 2 private servants not soldiers -	do	do	one	–	5 00	5 00
Forage—						
For 4 horses -	do	do	one	–	32 00	32 00

			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
*Subsistence—							Cts.	
For myself - -	do	do	30	12	360	Philadel-phia.	20	72 00
Do. 2 private servants, not soldiers	do	do	30	2	60	do	20	12 00
								$197 00

Remarks.—Commanding a separate topographical brigade, and double rations charged according to regulations.

J. D. GRAHAM, *Major T. E.*

*Double rations and also 4 extra rations per day for 23 years service.

DESCRIPTION OF SERVANTS.					
Name.	Complexion.	Height.		Eyes	Hair.
		Feet.	Inches		
Andrew	black	5	2	black	black
Sewall	do	5	9	do	do

I certify that the foregoing account is accurate and just, that I have not received pay, nor drawn rations, forage, or clothing, in kind, or received money in lieu thereof, for any part of the time herein charged; that I actually employed and kept in service the horses and private servants for the whole of the time charged; and that I did not, during the term so charged, or any part thereof, keep or employ as waiters or servants, soldiers from the line of the army; that the annexed is an accurate description of my servants; that for the whole period charged for my staff appointment, I actually and legally held the appointment, and performed duty in the subsistence department, during the time I have charged additional pay for appointment in that department: and that I was the actual and only commanding officer, at the double ration separate post charged for; and that no officer within my knowledge, has a right to claim, or does claim for said services, for any part of the period charged; that I was actually in the command of a company for the whole time additional pay is charged for that duty; that I have not been in the performance of any staff duty for which I claim, or have received, extra compensation during the time the additional ration [given to subalterns, by act of 2d March, 1827,] is charged: that for the whole time brevet pay is charged, I was on duty, and had a command according to my brevet rank agreeably to law and regulations: that I am not in arrears with the United States on any account whatsoever: that the last payment I received, was from paymaster C. H. Smith, U. S. Army, to include the month of March, 1841; I at the same [time] acknowledge that I have received of Daniel Randall, paymaster in the army of the United States, this 30th day of April, 1841, the sum of one hundred and ninety-seven dollars, and — cents, being the amount and in full of this account.

Signed duplicates.

J. D. GRAHAM,
Major Top'l Eng'rs.
W. B. LEWIS.

Lt. Tuttle's account.

C.

DR. The United States,

To Lieut. S. Tuttle, U. S Corps of Engineers.

On what account.	Commencement and expiration.		Term of service charged		Pay per month.	Amount.
	From.	To.	Months.	Days.		
					dols. cts.	dols. cts.
Pay—	1830.	1830.				
For myself - -	July 1	Sept. 30	3	–	30 00	90 00
For 1 private servant not soldier -	do	do	3	–	5 00	15 00
Forage—						
For horses - -						
Clothing—						
For 1 private servant not soldier -	do	do	3	–	2 50	7 50

	No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
Subsistence (double rations)					Cts.	
For myself - -	92	8	736	Fort Delaware.	20	147 20
For 1 private servant not soldier -	92	1	92		20	18 40
						$278 10

Remarks.—On separate command of operations relative to the security of the Pea Patch Island, to the construction of a water tank at, and to gravelling the parade of, Fort Delaware; and also of the operations relative to the improvement of the harbor of New Castle, Marcus Hook, Chester, and Port Penn.

I hereby certify, on the word and honor of a gentleman, that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part of the time therein charged; that I actually employed and kept in service, the horses and private servants for the whole of the time charged, and that I did not during the term so charged, or any part thereof, keep or employ as waiters or servants, soldiers from the line of the army; that the annexed is an accurate description of my servants; that for the whole period charged for my staff appointment, I actually and legally held the appointment, and that I was the actual and only commanding [officer] at the double ration post charged for; and that no officer within my knowledge has a right to claim, or does claim for said services, for any part of the period charged; that I was actually in the command of a company for the whole time additional pay is charged; that I have not been in the per-

formance of any staff duty for which I claim, or have received, extra compensation during the time the additional ration is charged; that I am not in arrears with the United States on any account whatsoever; and that the last payment I received, was from paymaster Charles B. Tallmadge, to include the month of June, 1830. I at the same time acknowlege, that I have received of Charles B. Tallmadge, paymaster in the army of the United States, this 30th day of September, 1830, the sum of two hundred and seventy-eight and $\frac{1}{100}$ dollars, being the amount and in full of this account.

Signed duplicates.

S. TUTTLE,
Lieut. U. S. Corps of Eng'rs.

DESCRIPTION OF SERVANTS.						Pay - - Subsistence - Forage - Clothing -
Name.	Complexion.	Height.		Eyes.	Hair.	$
		Feet.	Inches			
Augustes Millett	light.	5	6	dark.	dark.	W. B. LEWIS.

D.—*Col. McRee's account.*

The United States,

To brevet Col. Wm. McRee, for his pay and subsistence, Dr.

1817.		
May 12	For his pay as brevet colonel, from the 1st of July, 1816, to the 12th May 1817, inclusive, viz: ten months and twelve days, at $75 per month - - - - - -	$779 03
	For his subsistence from the 1st of July, 1816, to the 12th May, 1817, inclusive, viz: three hundred and sixteen days, at twelve rations per day, and twenty cents per ration - - - - - - - -	758 40
		1,537 43
1815.	Cr. The United States.	
July	By two months and seven days forage drawn in advance from purser Wm. S. Rogers, of the frigate Congress, at Flushing, in July, 1815, viz: from the 24th of April, to the 30th June, 1816, inclusive, at $12 per month, during which time no forage money was allowed, unless horses were kept	26 80
		$1,510 63

I certify on honor, that the above account is accurate and just; and that I have not received pay, nor drawn rations in kind, or received money in lieu thereof, for or during any part of the time therein charged.

WM. McREE,
Maj. Eng'rs and b'vt Colonel.
W. B. LEWIS.

E.—*Major Thayer's account.*

The United States,

To brevet Major S. Thayer, U. S. corps of engineers, Dr.

	Doll. cents.
To his pay as brevet major from 1 July, 1816, to 31 March, 1817, nine months, at $50 per month -	450 00
For his subsistence from 1 July, 1816, to the 31 March, 1817, 274 days at 8 rations per day, which at 20 cents per ration - - - - - - - -	438 40
Amount of pay and subsistence - - -	888 40
Cr. The United States.	
By two months and seven days forage, drawn in advance, from purser W. S. Rodgers, of the U. S. frigate the Congress, at Flushing, in July, 1815, viz: from 24th April, to 30th June, 1816, at 10 dollars per month, during which time no forage money was allowed, unless horses were kept - - - -	22 33
Bal. for pay and subsistence - - - -	$866 07

I certify on honor, that the foregoing account is accurate and just, and that I have not received pay, or drawn rations in kind, or received money in lieu thereof, for or during any part of the time above charged.

S. THAYER,
Major brevet, U. S. Army.
W. B. LEWIS.

Plaintiffs' Interrogatories.

Interrogatories on the part of the United States, to Wm. B. Lewis, 2d Auditor of the Treasury.

1. Be pleased to state the annual amount of pay and emoluments received by the defendant in this cause, from January 1, 1829, to December 6, 1838, on accounts audited and settled in your office.

2d. In your answer to defendant's 2d interrogatory, do you mean to be understood as saying, that the tabular statement in that

answer includes all the allowances made to the defendant during the period covered by the statement, whether in your office, or in any other office, or do you confine the answer to allowances made in your office?

In answer to the first interrogatory, the deponent, William B. Lewis, states, that the annual amount of pay and emoluments received by the defendant Charles Gratiot, from the 1st January, 1829, to the 6 December, 1838, is as follows:

From	1 January	to	31 December,	1829,	$4,869 17
"	"	do.	" do.	1830,	3,969 —
"	"	do.	" do.	1831,	3,969 —
"	"	do.	" do.	1832,	3,974 40
"	"	do.	" do.	1833,	3,998 80
"	"	do.	" do.	1834,	4,005 —
"	"	do.	" do.	1835,	4,005 —
"	"	do.	" do.	1836,	4,010 40
"	"	do.	" do.	1837,	4,005 —
"	"	do.	" do.	1838,	3,748 49

and that the above sum of $4,869 17, includes the sum of $900 17, for his brevet pay and emoluments, from the 24th May, to the 31st December, 1828, embraced in his pay account for March, 1829.

To the 2d interrogatory the deponent answers: That the tabular statement of the "monthly pay and emoluments to which Charles Gratiot was entitled as colonel of engineers, and brigadier general by brevet, from the 1 April, 1836, to the 6 December, 1838," as presented in the deponent's answer to the defendant's 2d interrogatory, contains only the allowances made to him on settlement in the second auditor's office.

W. B. LEWIS.

Additional interrogatory by defendant to Wm. B. Lewis.

State whether the pay account of Major General W. Scott, for the month of March, 1839, on which he was allowed treble rations for one year, was audited and passed in your office; also whether the account of the said Major General Scott for a per diem as commissioner to treat, and to make arrangements with, the Cherokee Indians, to include the 11th of April, 1838, amounting, in the aggregate, to $1,952, or thereabouts, was in like manner audited and passed in your office. If you answer affirmatively, furnish as part of your answer copies of the two said accounts.

In answer to the above interrogatory the deponent, William B. Lewis, states: That the account of Major General Winfield Scott, for the month of March, 1839, including an allowance of treble rations for one year, from the 1st of April, 1838, was audited and passed in this office in the settlement of Paymaster T. P. Andrews' account, made on the 7th March, 1840; and that the account of Major General Winfield Scott, for a per diem as commissioner to treat and make arrangements with the Cherokee Indians, allowed

by the acting Secretary of War on the 8th October, 1841, amounting to $1,952, was audited and passed in this office on the 12 October, 1841; and that the papers hereunto annexed as part of this answer, and marked A and B, are copies of said accounts called for by the above interrogatory.

W. B. LEWIS.

A.

Dr. The United States,
To Maj. Gen. Winfield Scott, U. S. army.

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.
	From	To	Months.	Days.		
Pay—					Dolls.	Dolls. cts.
For myself - -	1 Mar. '39	31 Mar. '39	One	–	200 00	200 00
For 4 private servants, not soldiers -	do.	do.	One	–	28 00	28 00
Forage—						
For 7 horses - -	do.	do.	One	–	56 00	56 00
Clothing—						
For 4 private servants, not soldiers -	do.	do.	One	–	10 00	10 00

			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
Subsistence—							Cts.	
For myself - -	do.	do.	31	30	930	–	20	186 00
	1 April, '38	do.	365	15	5,475	–	20	1,095 00
For 4 private servants, not soldiers -	1 Mar. '39	do.	31	4	124	–	20	24 80
								$1,599 80

Remarks.—Treble rations allowed for one year, on account of extraordinary expenses incurred in the Cherokee country, and on the north and northwestern frontier.

Allowed, J. R. P.

I hereby certify, that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part of the time therein charged; that I actually employed and kept in service the horse and private servant for the whole of the time charged, and that I did not during the term so charged, or any part thereof, keep or employ as waiter or servant soldier from the line of the army; that the annexed is an accurate description of

my servant ; that for the whole period charged for my staff appointment, I actually and legally held the appointment; that I was the actual and only commanding officer at the double ration post called for; and that no officer, within my knowledge, has a right to claim, or does claim, for said services, or any part of the period charged; that for the whole time brevet pay is claimed I was on duty, and had a command according to my brevet rank, agreeably to law and regulation; that I was actually in command of a company for the whole time additional pay is charged; that I have not been in the performance of any staff duty for which I claim, or have received, extra compensation during the time an additional ration is charged for; that I have been in the United States service, in the army, for the number of years stated in the charge for the extra ration; that I am not in arrears with the United States on any account whatsoever; and that the last payment I received was from Paymaster T. P. Andrews, and to the twenty-eighth day of February, 1839. I at the same time acknowledge that I have received of T. P. Andrews, paymaster, this 9th day of April, 1839, the sum of fifteen hundred and ninety-nine $\frac{80}{100}$ dollars, being the amount and in full of said account.

Signed duplicates, WINFIELD SCOTT.

Description of servants.						
Name.	Complexion.	Height.		Eyes.	Hair.	
		Feet.	Inches			
David -	Black.					
Simeon -	do.					
Piere -	White.					
Harriette -	White.					

Pay - -	$228 00
Subsistence -	1,305 80
Forage -	56 00
Clothing -	10 00
Amount,	$1 599 80

W. B. LEWIS.

B.

The United States,
To Major General Scott, commissioner, &c. Dr.

To his per diem as commissioner to treat, and to make arrangements with, the Cherokee Indians, 244 days, including the 11th of April, 1838, (the date of his appointment,) and the 10th of December, 1838, at $8 a day - - - - - - $1,952 00

Received of one thousand nine hundred and fifty-two dollars, in full of the above account.

WINFIELD SCOTT.

Treasury Department, 2d auditor's office, 10th Oct., 1841.
J. W. BROWN, *Clk.*

Received, 12th October, 1841, from the office of the 2d auditor, a requisition on the Treasury, No. 4,801, for $1,952, in payment of the within account.

WINFIELD SCOTT.
W. B. LEWIS.

DISTRICT OF COLUMBIA, *Washington county, ss:*

On this 16th day of March, in the year 1842, personally appeared before me, the subscriber, one of the justices of the peace for the county aforesaid, Major W. B. Lewis, and made oath on the holy evangely of Almighty God, that the answers to the foregoing interrogatories are true, to the best of [his] knowledge and belief.

Sworn and subscribed before me.

N. CALLAN, JR., *J. P.* [SEAL.]

The defendant next gave in evidence to the jury the deposition of Albion K. Parris, in the words following:

A. K. Parris' deposition.

Interrogatories propounded to the 2d comptroller of the Treasury by the defendant.

Int. 1. What office or station, *or office*, do you fill; and how long have you filled the same?

I fill the office of Second Comptroller of the Treasury; which office I accepted in August, 1836.

Int. 2. Examine the records of your office, and state therefrom what was the number of contracts transmitted from the engineer department for file, or otherwise, from the 30th July, 1828, to the 6 December, 1838, reported to have been examined and approved by said engineer department.

I am not able to answer this question with perfect accuracy; but from an investigation made by the chief clerk of this office, it appears that the number of contracts transmitted from the engineer department, to be filed in the second comptroller's office, between the 30th July, 1828, and the sixth of December, 1838, amounts to about two thousand eight hundred and thirty.

ALBION K. PARRIS.

DISTRICT OF COLUMBIA, *Washington county, ss:*

On this 16th day of March, eighteen hundred and forty-two, personally appeared before me, the subscriber, one of the justices of the peace for the county aforesaid, A. K. Parris, esq., and made oath on the holy evangely of Almighty God, that the answers to the foregoing interrogatories are true, as stated, to the best of his knowledge and belief. Same subscribed before me.

N. CALLAN, JR., *J. P.* [SEAL.]

The defendant next gave in evidence a deposition of General N. Towson, in the words following:

General Towson's deposition.

Interrogatories propounded to N. Towson, paymaster general U. S. army, by Charles Gratiot, late colonel of engineers, and brigadier general by brevet.

Interrogatory 1st. State what office you fill, and how long you have filled the same.

Answer. I fill the office of paymaster general of the army. I was first appointed on the 28th August, 1819, and held the office until the 1st June, 1821, when I was appointed colonel of the 2d regiment of artillery. I was reappointed paymaster general on the 8th of May, 1822, and have filled the office ever since.

Interrogatory 2d. Examine the records of your office, and state therefrom when Charles Gratiot, late colonel of engineers and brigadier general by brevet, was put under stoppage of pay and emoluments, and for what amount?

Answer. The stoppage of General Gratiot's pay commenced on the 1st of April, 1836; after which date no payment was made to him through the pay department. The second comptroller directed General Charles Gratiot's pay to be stopped on the 2d September, 1831, until the sum of eight thousand nine hundred and fifty-eight dollars and ninety-one cents was withheld. The stoppage was suspended under the following order of the acting Secretary of War, Mr. Secretary Cass being then absent:

"I think it proper to direct that the case of General Gratiot be reserved for the action of the Secretary of War; and the order stopping General Gratiot's pay be in the meantime suspended.

(Signed) "L. McLANE.

"September 28th, 1831."

Interrogatory 3d. State on what authority the said Charles Gratiot was paid the pay and emoluments of a brigadier general, and for what service or command?

Answer. Brevet Brigadier General Charles Gratiot succeeded General Macomb as colonel and chief engineer, and was entitled to the pay of his brevet rank under the order of President Monroe, dated 12 June, 1822, which order gave to General *Macomb* the brevet pay of brigadier general for performing the duties that devolved on General Gratiot by General Macomb's promotion.

N. TOWSON, *P. M. G.*

PAYMASTER GENERAL'S OFFICE,
Washington, January 18th, 1842.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [L. S.]

The defendant next gave in evidence the deposition of Asbury Dickens, with a copy of a report thereto annexed, in the words following:

A. Dickens' deposition.

Interrogatories propounded to A. Dickens, esq'r, Secretary of the Senate, by the defendant.

Int. What office or station do you fill; and how long have you filled the same? Examine the files of your office, and furnish therefrom a certified copy of Charles Gratiot's report, made in obedience to Senate resolution of the 2d January, 1829, on the claims of Hopkins.

To the foregoing interrogatory, I answer, that I am Secretary of the Senate of the United States, and have been so since Dec. 1836. There is on the files of the office of the secretary of the Senate, a report of the Secretary of War, dated the 15th January, 1829, made in obedience to a resolution of the Senate of the second of the same month, and containing a report of the Chief Engineer Charles Gratiot, dated the 5th of the same month, on the petition of Edward W. Hopkins and Maria A. Hopkins, and I annex a copy of those reports.

ASBURY DICKENS.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Report of Secretary of War on Hopkins' petition.—(Copy.)

DEPARTMENT OF WAR, *January* 15, 1829.

SIR: The petition of Edward W. Hopkins and Maria A. Hopkins, the only heirs of Benjamin W. Hopkins, deceased, having been referred to this Department by a resolution of the Senate of the 2d instant, for the purpose of ascertaining and reporting "to the Senate whether there was any failure or delay on the part of the Government of the United States in furnishing an engineer to lay out and direct the construction of the fort, at or near Mobile point, and if so, what damages the contractor, Benjamin W. Hopkins, sustained in consequence of such failure and delay," I have the honor of returning the documents relating to the claim, together with a report thereon by the chief engineer, to whom the subject was referred. The estimate of damages sustained by Mr. Hopkins, in consequence of the neglect of the Government to lay out the work at the time specified in the contract, as presented in the report, is, from the nature of the subject, as well as from the imperfect information upon which it is based, necessarily, in a great measure, conjectural; but it is believed to be as fair an one as could be made from the data in possession of the Department. Mr. Hopkins no

doubt suffered severely by the long detention of his hands from labor, and his vessels from employment; and probably sustained many of the imagined damages presented and claimed by the memorialists, but not included in the estimate. These, however, are of a character so vague and undefined, that they form more proper subjects for the exercise of the equitable discretion of Congress, than for mathematical estimates. It is believed, however, that the estimates may be of some advantage to the Senate in forming their judgment on the whole case.

With the greatest respect, I have the honor to be, your obedient servant,

(Signed) P. B. PORTER.

To the PRESIDENT OF THE SENATE.

Report of chief engineer on Hopkins' petition.—(Copy.)

ENGINEER DEPARTMENT,
Washington, January 5, 1829.

To the Hon. PETER B. PORTER, *Secretary of War.*

On the subject of the resolution of the Senate of the 2d instant, relating to the claims of the heirs of Benjamin W. Hopkins, deceased, which was referred by you to this department, I have the honor to report, that it appears from the correspondence on file in this office, that there was a delay on the part of the Government of the United States, in furnishing an engineer to lay out and direct the construction of the fort at Mobile point, since the terms of the contract required Hopkins to commence his operations on or before the 1st of October, 1818, and the engineer, Captain Gadsden, who was to lay out the work, reports his arrival at Mobile on the 17th January, 1819, stating that in half an hour he would embark for Mobile Point. The next communication from Capt. Gadsden bears date "New Orleans, 9th February, 1819," and states, that between the period of his arrival at Mobile, and the date of his letter, he had laid out the fortifications at Mobile point, Dauphin island, and the Rigolets; and that the contractors had been set in operation to the extent of their means and preparations. There is no evidence of the exact date of Mr. Hopkins' arrival at Mobile point, or of Capt. Gadsden's laying out the fort there, but it is probable, from the foregoing, that the former was in October, 1818, and the latter about the 20th of January, 1819. Capt. Gadsden also states in his letter of 9th of February, 1819, that "the contractors have been hurried into the country with a train of laborers, carpenters, &c., which they cannot employ to advantage; and many of whom they must necessarily dismiss." On the whole, there appears to be no doubt, that the contractor sustained damages in consequence of the delay in furnishing an engineer to direct his operations; but, as the record of this department furnish no sufficient data for estimating their amount, it can only be ascertained in an approximate manner,

by a comparison of the foregoing statements with those contained in the affidavits of A. Gordon and R. D. Hopkins, which are found among the papers accompanying the petition of Hopkins' heirs. Gordon, who was Hopkins' clerk and bookkeeper, states the number of laborers at Mobile point to have been 85; that of artificers 25; master artificers 2; clerks, &c., 4; and Hopkins states the number of hands at about 100. Their statements agree as to wages which were to be paid to these men, and in general terms, as to the time of their arrival at Mobile point, the one fixing it on or before the 1st of November, and the other about the 20th of October, for those from Boston, and the first week in November for those from New York; and Gordon further says, that about 3-5ths of the men were from Boston, and the remainder from New York. Supposing, as above, that the work was laid out by the 20th of January, 1819, the statement of damages will stand thus:

51 laborers,	3 months,	at $20	per month	-	$3,060 00
34 ditto,	2⅔ "	"	"	-	1,813 33⅓
15 artificers,	3 "	25	"	-	1,125 00
10 ditto,	2⅔ "	"	"	-	666 66⅔
1 master artificer,	3 "	75	"	-	225 00
1 ditto,	3 "	60	"	-	180 00
4 clerks, overseers, &c.,	3 "	1200	pr. annum		1,200 00
Board of the above hands	10,000 days,	at 50 cts.	pr. day		5,000 00
					$13,270 00

It is to be observed, however, that the services of these men were not entirely lost to the contractor during the whole period named, for they were employed in the construction of the temporary buildings necessary for their own accommodation; but what reduction it would be fair to make on this account, or how far this consideration is overbalanced by other inconveniences and losses attending the delay of the period for commencing work on the fort, it is impossible for me to say. Some weight is doubtless due to the claim for damages in consequence of delay in furnishing funds to the contractor, but little or none to the several claims set forth in the "brief statement of facts," accompanying the petition, for loss of materials used in the temporary buildings, which buildings remained the property of the contractor, and were sold by his executor; for loss of the best season for work, a great portion of which still remained after the 20th of January; for loss in consequence of the bad habits acquired by his men; or the want of an inspector of materials. The papers accompanying the resolution of the Senate are herewith returned.

Respectfully submitted.

(Signed) C. GRATIOT, *Col. Eng'rs.*

Congressional documents.

The defendant next read in evidence, printed copies of document number seventy eight, of the second session, twenty-third Congress; of reports numbers four hundred and forty-nine, four hundred and fifty-five, four hundred and fifty-six, of the first session, twenty-third Congress, which it is agreed shall be used in this cause, in all courts, as if spread upon this bill of exceptions.

The defendant then gave in evidence a certified copy of certain army regulations of the month of September, in the year 1816, as extracted from the body of those regulations and certified; which copy is in the words following:

Army regulations.

Extracts from the "Army Regulations, revised conformably to the act of 24th April, 1816.—War Office, September, 1816."—Pages 96, 97, 98.

"Corps of engineers.—The functions of the engineers being generally confined to the most elevated branch of military science, they are not to assume, nor are they to be ordered on any duty beyond the line of their immediate profession, except by special authority through the War Department; and when so arranged to other duties, either on detachment or otherwise, they will have precedence according to their commissions, which at all times entitle them to every mark of military respect."

"Whenever any officer of engineers is sent to any military department, fortress, garrison, or post, a duplicate of his orders will be sent to the commanding officer, by the adjutant and inspector general, when the order is given by the War Department; and by the chief of engineers, when the order is given by or through him. On his arrival, the engineer shall communicate his orders, and will receive the necessary facilities for the accomplishment of the same from the commanding officer. While so on duty, without being specially put under the direction of the commanding officer, the senior engineer present will be furnished with copies of all orders and regulations of the command, relative to etiquette and police, and will be regularly served with the countersign of the post or garrison, when quartered within the chain of sentinels. When leaving the limits of the department or command, under orders, the engineer will report the same to the commandant."

"Duties of Topographical engineers."—To make surveys, and exhibit such delineation of these, as the commanding general shall direct; to make plans of all military positions, (which the army may occupy,) and of their respective vicinities, indicating the various roads, rivers, creeks, ravines, hills, woods and villages, to be found therein; to accompany all reconnoitering parties, sent out to obtain intelligence of the movements of the enemy, or of his positions, &c., to make sketches of their route, accompanied by

written notices of every thing worthy of observation thereon; to keep a journal of every day's movement, when the army is in march, noticing the varieties of ground, of buildings, of culture, and the distances, and state of the roads between given points, throughout the march of the day; and lastly, to exhibit the relative positions of the contending armies on fields of battle, and the disposition made, whether for attack or defence."

"Quartermaster General's department." "It shall be the duty of this department to provide—

"1. For the quartering and transporting of troops.

"2. For transporting all military stores, camp equipage, and artillery.

"3. For opening and repairing roads, and constructing and repairing bridges, which may be necessary to the movement of the army, or of any detachment thereof."

Page 156—"Approved" "JAMES MADISON."

I certify, that the above and foregoing are true and correct extracts from the army regulations, revised conformably to the act of 24th of April, 1816.

In testimony whereof, I John C. Spencer, Secretary of War, have hereunto set my hand and caused the seal of the [L. S.] War Department to be affixed, on this first day of November, in the year of our Lord one thousand eight hundred and forty-two.

JOHN C. SPENCER.

The defendant here having closed his evidence, the United States gave in evidence to the jury, the following deposition of John C. Calhoun.

Plaintiff's evidence—Mr. Calhoun's deposition.

Interrogatories on the part of the United States to the Hon. John C. Calhoun.

1. When were you appointed Secretary of War, and when did you resign that office?

2. Did you not introduce the organization of the War Department, known as the bureau system, by which the engineer department of the army became a bureau of the War Department?

3. In establishing the aforesaid bureau system, was it any part of your plan, intention, or expec[ta]tion, that the chief of the corps of engineers should receive for his services, as the officer in charge of the engineer bureau, any compensation over and above his pay and emoluments as an army officer; or did you ever make any agreement, recognizing expressly, or by implication, any right in such officer to such extra compensation?

In answer to the first interrogatory, this deponent saith, that he was appointed Secretary of War the latter part of the year 1817,

and continued in the discharge of the duties of the office 'till March, 1825.

In answer to the second he saith, that he established what is known as the present bureau system of the department, of which the engineer department constituted a part.

In answer to the third he saith, that he has no recollection of any intention or expectation, in establishing the bureau system, that the chief of the corps of engineers should receive for his services, as the officer in charge of that bureau, any compensation over and above his pay and emoluments as an officer of the army; nor does he recollect of ever having made any arrangement recognizing expressly, or by implication, any right on his part to such extra compensation; but for a more perfect answer to this interrogatory, he would refer to the rules and regulations established for the bureau while he acted as Secretary of War, and the decisions he made under them, as containing his intentions and views in reference to this interrogatory.

J. C. CALHOUN.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 17 day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

The United States next gave in evidence, the deposition of Colonel John J. Abert, in the words following:

Colonel Abert's deposition.

Interrogatories on the part of the United States, to Col. John J. Abert.

1. What office or station do you fill, and how long have you filled the same?

Ans. I am the colonel of the corps of topographical engineers, and have held that commission since the 7th July, 1838; but I have been at the head of the bureau of topographical engineers since June 22d, 1831, and up to this present date inclusive. This bureau was made "a distinct bureau of the War Department," by regulation dated 22d June, 1831; previous to that date, it was a subordinate bureau or branch of the engineer department. I was about three years at the head of it when subordinate to, or a branch of the corps of engineers, or engineer department, as the command of that corps is frequently designated. Previous to the 7th July, 1838, and while in the bureau as aforesaid, I held the brevet rank of lieutenant colonel.

2. Have you ever received or claimed any extra compensation for "official services," at one of the *desks* or bureaux of the War Department? During the time that you have so occupied one of said desks in said bureau, have you had under your charge any

work of internal improvement, such as the construction of breakwaters, roads, improvement of harbors, or other works of that character; if so, have you ever charged or received extra compensation therefor?

Ans. I have never received or claimed any extra compensation for official services, at one of the desks or bureaux of the War Department, while at the head of said bureau. When the bureau of topographical engineers was subordinate to, or under the command of, the chief of the corps of engineers, I drew a per diem for a special service, as will appear from the accounts which have been obtained and on file in the suit. And on three several occasions, I was sent from Washington to distant parts on Indian matters: while absent, I received an extra compensation, but I was not, during the time, in the direction of the bureau: some other officer had the direction of the bureau during those periods of absence.

After my last expedition with the Indians, there being on my return a vast amount of matter to be arranged, legitimately a duty of the bureau of Indian affairs, and not a duty of mine, but with which I had become well acquainted, I was allowed to charge a small per diem for arranging the same. This duty was considered extra official, because it was in no wise, either directly or indirectly, connected with my official duties, or necessary to their execution. I have [had] under my charge works of internal improvement, such as the construction of breakwaters, roads, improvement of harbors, and other works of that character. In fact, at this time, all works of that character under the superintendance of the War Department, except the Cumberland road, and I have never charged or received any extra compensation therefor.

3. Look at the account of Gen'l Gratiot, the defendant in this suit, and also the account, a copy of which is appended to the deposition of James C. Wilson, a witness herewith annexed, and also at the army regulations of 1825, in relation to the engineer department, and state whether, as an officer of the army, you consider the services charged for in said accounts as being the proper and legitimate duties of the chief of the corps of engineers.

Ans. This being matter of opinion, obliges me to be somewhat prolix. I have examined into the accounts and regulations referred to in this interrogatory, and state in answer, that in my judgement, any duties of an engineer character, assigned by the regulations, or by direction of the War Department, to either corps of engineers, become the proper and legitimate duties of that corps. The law does not define the duties of either corps of engineers, these duties can be ascertained only from the regulations. In 1825, the corps of topographical engineers consisted only of ten officers; it was not augmented to its present number until 1838. At that time, namely, 1825, it was attached and subordinate to the corps of engineers, of which Gen'l Gratiot became the chief. The civil engineers, authorized by the act of the 30th April, 1824, were

also attached to, and placed under, the direction of, the same corps of engineers. All the engineer force of all kinds under the control of the War Department being concentrated into one command, was designated the engineer department. The regulations of 1825 had to provide for the duties of these several branches, made into one command; and thus the duties of superintending the whole, became the legitimate duties of the chief of the corps of engineers as the chief or head, under the Secretary of War, of the engineer department. As much of the superintendence of accounts as is assigned by the regulation of 1825, to the chief of the engineer department, seem clearly to my judgment, as regular, official and engineer duty. The examination is of prices—if a fair value has been paid: of appropriateness—if the article bought is proper for the purpose: of quantities—to protect against waste: of application—to see that articles purchased are applied as intended. In fact, of such matters as appear in my judgment to require professional knowledge properly to decide upon, and such as, to the extent of my reading and observation, are always decided upon by professional men. The monied investigation of accounts belongs to the accounting officers, and is attended to by them, not by chiefs of bureaux; at least such is my understanding of the regulations, and my practice under them. The reports, correspondence, references and contracts, which these duties involve, are necessary and inseparable consequences from them, and cannot be separated from the superintending head. To express my opinion without reference to details, it appears to my judgment, that whatever duty requires the professional knowledge of an engineer properly to execute, is a proper and legitimate engineer duty; and whatever duty would involve an officer in the consequences of disobedience were he to neglect it, that is, in arrest, trial by court martial and punishment under the rules and articles of war, is a military duty; and that a vigilant superintendence of all details and contingencies of the command which an officer exercises are strictly military and official duties; and that the special and official duties of any branch of service are known and acknowledged, as defined and expressed in the general regulations for the government of the army.

JOHN J. ABERT.
Col. Corps T. Eng'rs.

Bureau T. Engineers, 5 Feb., 1842.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

On this 16th day of March, in the year eighteen hundred and forty-two, personally appeared before me, the subscriber, one of the justices of the peace for the county aforesaid, Col. John J. Abert, and made oath on the Holy Evangely of Almighty God, that the answers to the foregoing interrogatories are true, to the best of his knowledge and belief. Sworn and subscribed before me.

N. CALLAN, Jr., *J. P.* [SEAL.]

The United States next gave in evidence the deposition of General Thomas S. Jesup, in the words following:

General Jesup's deposition.

Interrogatories propounded to General Thomas S. Jesup, quartermaster general, by General Gratiot.

Question 1. What office or station do you fill, and how long have you filled the same?

Answer 1. I hold the office of quartermaster general of the army, also that of major general by brevet; the former I have held since the 8th of May, 1818, and I rank as major general from the 8th of May, 1828.

Question 2. State whether Lieut. Charles Dimmock was an officer of the quartermaster's department during the year 1834; and state also whether the said Dimmock was then, or ever was, an officer of the corps of engineers.

Answer 2. Lieut. Charles Dimmock held in 1834 the office of assistant quartermaster in the staff; he was not an officer of the corps of engineers, but was a lieutenant of artillery.

Question 3. The regulations of the War Department, of the 27 July, 1821, grants to the quartermaster general, commissary general of subsistence, the colonel of engineers, and chief of the ordnance department, while stationed at the seat of Government, double rations; be pleased to state the reason and grounds on which, and for what kind of, service the same was allowed.

Answer 3. The regulation of the War Department, referred to, simply carried out a discretionary power vested in the President by the act of the 16th of March, 1802. I am by law entitled, as quartermaster general, to the pay and emoluments of a brigadier general. The pay and emoluments are contingent, and depend upon what others of the same rank receive; I claimed that the *whole* pay and emoluments of a brigadier general, not *part* of them, formed the standard to govern my case under analogous circumstances, and I understood the Executive to decide the claim upon that principle. At Washington I exercise an independent military jurisdiction, under the orders of the War Department, co-extensive with the Union. My office here is the head-quarters of my department, and is analogous to the station of a general commanding a separate geographical department; and, as such, is considered a separate military post within the meaning of the law. I do not receive the allowance of additional rations for any additional or extra duty, but upon the same military principle by which other officers receive it when exercising independent jurisdiction or command. When placed on duty at any other place than Washington, under circumstances that would deprive other officers of my rank of the allowance, I am also deprived of it. The facts are the same, I presume, in the other cases cited. The officers receive the allowance, not for extra services, but upon the military principle that each exer-

cises, in his particular branch of service, a separate and independent command, and that his office here is the head-quarters of his department, as much so, as if it were established at Carlisle, New Orleans, or any other post in the Union; and, consequently, is considered a separate post within the meaning of the law.

TH. S. JESUP,
Major general and quartermaster general of the army.

Plaintiff's interrogatories.

Interrogatories on the part of the United States to General Jesup.

1. In answering the defendant's 1st interrogatory, you state that you hold the office of quartermaster general of the army, and also that of major general by brevet. Please state whether the office of quartermaster general is a bureau of the War Department; and, if so, whether you have ever received or claimed compensation in such bureau, over and above your regular pay and emoluments as a general of the army.

Answer 1. The office of the quartermaster general of the army is erroneously designated in common parlance, but not by law, a bureau of the War Department. I have never received nor claimed, as quartermaster general, any other pay, emolument, or compensation, except that of *brigadier* general, which is the compensation established by law for the *quartermaster* general of the army; but during a period, commencing on the 25 of May, 1836, and terminating on the 15th of May, 1838, when I was actually in the command of a separate army, or of a full and separate division in the field, I claimed and received the pay and emoluments of a major general, as authorized by law. I have never received nor claimed on account of my brevet rank a single cent, except for the period before stated; nor have I ever received or claimed *for any service*, as quartermaster general, or as chief of the bureau (so called) of the quartermaster's department, any *extra pay* whatever.

2d. Have you ever received or claimed any extra compensation for official services in your office of quartermaster general, at one of the desks or bureaux of the War Department, erroneously so called? During the time that you have so occupied one of said "desks" in said bureau, have you had under your charge any works of internal improvement, such as the construction of breakwaters, roads, or other works of that character? If so, have you ever charged or received *extra* compensation therefor?

Answer 2d. I have never received or claimed any extra compensation for official services in my office of quartermaster general, or "at one of the desks or bureaux, so called, of the War Department." During the time I have performed the duties of the said office, or occupied and directed the service of the said bureau, I have had the charge of several important public works, such as the Delaware breakwater, from March or April, 1829, to May, 1836; the constructing of building[s] at the permanent fortifications; the

construction of bridges; the opening and construction of roads; the improving of the navigation of rivers, by causing obstructions to be removed from their channels; the constructing of wharves; the erecting or constructing of defences at military posts, as well as of field fortifications. These works have involved large sums of money; have imposed on me great additional labor, both mental and physical; increased the pecuniary accountability of my department, and subjected me to heavy additional expenses. When inspecting any of those works, I have received the usual travelling allowance of my rank as an officer of the army, to cover part of the extra expense to which I was subjected; that allowance may be said to be incidental to the works, but it was precisely such as I should have received when travelling in the performance of any other duty connected with my rank or position in the army.

3d. Look at the accounts of General Gratiot, the defendant in this suit, appended to the deposition of Col. John J. Abert herewith submitted, and also at the regulations of the army of 1825, in relation to the engineer department, and state whether, as an officer of the army, you consider the services charged for in said accounts as the legitimate and proper duties of the chief of corps of engineers.

Answer 3d. I have examined the account and regulations referred to, and, as an officer of the army, I do consider the services charged for in that account as the legitimate and proper duties of the chief engineer—as much as the direction of the works for the permanent defence of the country. The only specific duties imposed, *by law*, upon the corps of engineers, are those of acade*mians* at West Point; but the President has the legal right, as the constitutional commander-in-chief, to require of them the performance of any other duties, and at any other place. The 27th section of an act of Congress, entitled an act, "*fixing the military peace establishment of the United States*," approved the 16th of March, 1802, provides that the corps of engineers, when organized according to a previous section, "shall be stationed at West Point, in the State of New York, and shall constitute a *Military Academy;* and the engineers, assistant engineers, and cadets, of the said corps, shall be subject at all times to do duty in all such places, and on such service, as the President of the United States [shall direct]." The regulations of 1825, so far as they relate to the corps of engineers, simply carry out in detail, as I understand them, the legal power conferred upon the President by this section.

TH. S. JESUP,
Major general and quartermaster general.

Cross interrogatory by defendant to General T. Jesup.

4. You state, in answer to the 3d interrogatory on the part of the U. S. in this cause, that "I have examined the account and regulations referred to, and, as an officer of the army, I do consider the services charged for in that account as the legitimate and proper

duties of the chief engineer—as much so, as the direction of the works for the permanent defence of the country. The only specific duties imposed, *by law*, upon the corps of engineers, are those of academicians at West Point; but the President has the legal right, as the constitutional commander-in-chief, to require of them the performance of any other duties, and at any other place. The 27th section of an act of Congress, entitled an act '*fixing the military peace establishment of the United States*,' approved the 16th of March, 1802, provides that the corps of engineers, when organized according to a previous section, 'shall be stationed at West Point, in the State of New York, and shall constitute a *Military Academy;* and the engineers, assistant engineers, and cadets, of the said corps, shall be subject at all times to do duty, *in such places and on such service*, as the President of the United States shall direct.' The regulations of 1825, so far as they relate to the corps of engineers, simply carry out in detail, as I understand them, the legal power conferred upon the President of the United States." Is this an opinion formed from your own views of the laws and regulations, or is it founded upon any particular facts in your own knowledge? and if so, state them.

Answer. My answer to the interrogatory referred to, is an opinion formed from my own view of the law and regulations. I understood that an opinion was asked, and I referred to the law and regulations as the basis of that opinion.

TH. S. JESUP.

Sworn and subscribed before me, this 16th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

The United States next gave in evidence a deposition of John H. Eaton, in the following words:

Major Eaton's deposition.

Interrogatories on the part of the United States to the Hon. John H. Eaton.

1. When were you appointed Secretary of War, and when did you resign?

2. Be pleased to examine the defendant's accounts, filed in the deposition of Benjamin Fowler, a deponent in this cause; the defendant's account, filed in the deposition of John C. Spencer, another deponent in this cause, and the army regulations of 1825, in relation to the engineer corps. Be pleased then to state whether such of the services charged for in said accounts, or in either of them, as were rendered while you were Secretary of War, were rendered under any agreement, express or implied, that the defendant was to receive compensation for them, over and above his pay and emoluments as a brigadier general.

Answer to above questions, by J. H. Eaton.

1st. It was in March 13th or 15th, 1829, I think, that I entered on the duties of Secretary of War, and resigned April, 1832.

2nd. No contract or engagement was ever entered into by me with General C. Gratiot, as to any services to be performed by him; in fact I was without authority to enter into any arrangement. I only remember that the general laid before me an account for compensation for his brevet rank pay, and which, as I have already stated, was endorsed by me "allowed." General McComb, who acted as head of the engineer corps, had received the same pay, and upon that authority, settled by President Monroe, I allowed General Gratiot's claim; but there never was made by me with General Gratiot, as to any services to be rendered by him in the department, any contract, express or implied. I repeat, I could not make any such contract, for no law or regulation gave me an authority to do so, and beyond these limitations I was not at liberty to go, and did not. The Secretary of War, or of any other department, can exercise no discretion other than the laws give him control of. Like every other citizen, his power of action is limited by law; and as the law gave me no authority to contract for an increased pay to any officer, so could I not enter into any engagement of the kind suggested. The extra account of General Gratiot for brevet pay was in the range of my discretionary powers; and believing under past precedent that it was right, I did not hesitate to allow it; and beyond this, no action of mine was made in reference to him.

JNO. H. EATON.

WASHINGTON CITY, 12*th March*, 1842.

DISTRICT OF COLUMBIA, *Washington county:*

Sworn and subscribed before me, this 17 day of March, in the year eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Defendant's interrogatories.

Interrogatories propounded to the honorable J. H. Eaton by the defendant.

1. What offices or stations did you fill during the month of March, 1829, and how long did you fill the same?

Answer. I was Senator in Congress until the 13th of March, (I think it was,) when I was appointed Secretary of War, where I remained until the summer of 1831.

2. Look at the two papers hereto appended, and state whether you have seen the originals of which they are copies. Please state further the when, as also the action you gave to the pay account, on their being submitted to you for consideration.

Answer. I recollect that, shortly after entering the War Department, General C. Gratiot, then at the head of the engineer corps,

submitted a claim for pay as brevet brigadier general; submitting for my information, at the same time, an order made by President Monroe in the case of General McComb, who had occupied the same place held by General Gratiot, and which awarded to him the pay of brevet brigadier. Acting upon that rule, I allowed the claim of General Gratiot; and I am impressed with the belief, nay feel confident, that I endorsed on the account "allowed," and signed my name; indeed I must have signed it, or the auditor would not have passed it. Whenever a claim was laid before me, if "allowed," I so wrote, or if refused, "disallowed" was written, and my reasons given for doing so. The order annexed is the one I have made reference to in my statement.

JNO. H. EATON,
Late Secretary of War.

Copy.

The nature and extent of General McComb's command, taking into view the military academy at West Point, and the topographical engineers which are attached to his command, as chief of the corps of engineers, his brevet pay appears to be clearly within the meaning of the laws applicable to the case. The allowance of the pay of a brigadier to the assistant engineer, General Bernard, is an additional reason in favor of the allowance.

JAMES MONROE.

JUNE 12, 1822.

The brevet pay and emoluments of brigadier will commence from the time that he was arranged to his present command. J. M.

The above order is the one I have made reference to.

JNO. H. EATON.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this 17th day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., *J. P.* [SEAL.]

Dr. The United States,
To Br. General Charles Gratiot, Chief Engineer.

On what account.	Commencement and Expiration.		Term of service charged.		Pay per month	Amount.
	From.	To.	Months.	Days.		
					dols. cts	dols. cts.
Pay—						
For myself - -	24 May, 1828	28 Feb., 1829	9	8	29 00	268 47
	1 March, 1829	31 Mar., 1829	1	0	104 00	104 00
For 1 private servant, not soldier -	24 May, 1828	28 Feb , 1829	9	8	5 00	46 29
3 do. do. do. do. do.	1 March, 1829	31 Mar., 1829	1	0	15 00	15 00
Forage—						
For 1 horse - -	24 May, 1828	28 Feb., 1829	9	8	8 00	74 06
Do. 5 do. - -	1 March, 1829	31 Mar., 1829	1	0	40 00	40 00
Clothing—						
For 1 private servant, not soldier -	24 May, 1828	28 Feb., 1829	9	8	2 50	23 15
3 do. do. do. do. do.	1 March, 1829	31 Mar., 1829	1	0	7 50	7 50

On what account.	From.	To.	No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	Amount.
Subsistence—							cts.	
For myself - -	24 May, 1828	28 Feb , 1829	251	12	3372	–	20	674 40
	1 March, 1829	31 Mar., 1829	31	24	744	–	"	148 80
For 1 private servant, not soldier -	24 May, 1828	28 Feb., 1829	281	1	281	–	20	56 20
3 do. do. do. do. do.	1 March, 1829	31 Mar., 1829	31	3	93	–	"	18 60
								$1476 47

Remarks.—Difference of pay between colonel and br. general.

In addition to the duties assigned to the engineer department, as existing during the year 1822, the whole of the service of internal improvements under the act of 30th April, 1824, have been placed under its direction, thereby greatly exending its responsibility.

(Signed) C. GRATIOT,
Brigadier General Chief Engineer.

I hereby certify, that the foregoing account is accurate and just; that I have not received pay nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part of the time therein charged; that I actually employed and kept in service the horse and private servant for the whole of the time charged, and that I did not, during the term so charged, or any part thereof, keep or employ as waiter or servant a soldier from the line of the army; that the annexed is an accurate description of my servant; that for the whole period charged for my staff appointment, I actually and legally held the appointment, and did

duty in the department during the time charged for. That for the time I have charged double rations as an engineer, I was actually in command of a separate party or brigade on topographical duty of a strictly military character, and according to regulations; that I was the actual and only commanding officer at the double ration post charged for; and that no officer within my knowledge has a right to claim, or does claim, for said services, or any part of the period charged; that for the whole time brevet pay is claimed, I was on duty and had a command according to my brevet rank, agreeably to law and regulations; that I was actually in command of a company for the whole time additional pay is charged; that I have not been in the performance of any staff duty, for which I claim or have received extra compensation during the time an additional ration is charged for; that I have been in the United States' service in the army as a commissioned officer for the number of years stated in the charge for the extra ration; that I am not in arrears with the United States on any account whatsoever; and that the last payment I received was from paymaster Andrews, and to the 28th day of February, 1829. I at the same time acknowledge that I have received of T. P. Andrews, paymaster, this 31st day of March, 1829, the sum of fourteen hundred and seventy-six $\frac{47}{100}$ dollars, being the amount and in full of said account.

Signed duplicates.

(Signed,) C. GRATIOT,
Br. Genl. Chief Engr.

DESCRIPTION OF SERVANTS.

Name.	Complexion.	Height.		Eyes.	Hair.
		Feet.	Inches		
Jane	white.				
John	yellow.				
Noel	do				

Pay - -	433 76
Subsistence -	898 00
Forage -	114 06
Clothing -	30 65
	$1,476 47

Major Eaton's correction.

John H. Eaton states, in answer to defendant's 1st interrogatory, that "I was senator in Congress until the 13th of March, (I think it was,) 1829, when I was appointed Secretary of War, where I remained until the summer of 1831." And in answer to the cross interrogatories on the part of the United States, he states, "It was in March 13th, or 15th, 1829, I think, that I entered on the duties of Secretary of War, and resigned April, 1831," but I continued in the office by request of the President, until I think the month of June.

JNO. H. EATON.

The above corrected statement of J. H. Eaton is admitted by me on the trial of the United States vs. General Charles Gratiot, and to be considered as if his deposition had been regularly taken.

CHS. B. PENROSE,
Solicitor of the Treasury.

Nov. 2d, 1842.

Facts admitted by parties.

It is admitted by the parties, that the account referred to in the depositions of Col. J. J. Abert and General Jesup is the same attached to the deposition of Benjamin Fowler.

The United States, by the district attorney, admitted that the defendant should receive credit for the sum of $5,758, being the fifth item of his account to be deducted from the balance found due from him to the United States on the Treasury transcripts given in evidence; and also that the sum of $276, being one-half of the eleventh item in his account, should, in like manner, be credited to him against the balance on said transcripts.

The defendant withdrew his claim for the fourth, ninth, tenth, twelfth, and thirteenth, and one-half of the eleventh items in his account, the same having been allowed him in former settlements.

The parties having here closed their evidence, the court instructed the jury in writing, on the part of the United States, as follows:

Instructions given.

1st. That the defendant is not entitled to any commission on the sums by him turned over to James Maurice, charged by him on account of Fort Calhoun and Fort Monroe, and rejected by the accounting officers of the Treasury, (1), because defendant received four dollars each day for his attendance upon the above works, by a former allowance, and by the one now ordered; (2), because the only evidence is, what the transcript introduced by the plaintiff furnishes; and such evidence is not sufficient to authorize any commission to be allowed merely for turning over to an accounting officer the moneys.

2d. Nor is the defendant entitled to any credit for commissions on disbursements on account of appropriations for fortifications as charged by him. Of this item, the only evidence in the cause is that furnished by the transcript introduced by the United States, as the principal evidence on which the defendant is charged, and the evidence thereby furnished, is not sufficient to authorize the jury to allow the defendant the credit claimed.

3d. Nor is the defendant entitled to commissions for disbursements on account of contingencies and repairs of fortifications as charged by him, there being no evidence on this item of charge except the above named transcript, which evidence is not sufficient to authorize the jury to allow any credit for this item.

4th. Nor is the defendant entitled to any credit for commissions,

as charged, upon any moneys collected of Jacob Lewis & Co. and Samuel Cooper, or either of them: because the above named transcript is the only evidence in the cause to establish this charge against the United States, and such evidence is not sufficient.

5th. Nor is the defendant entitled to commissions as charged by him on account of sales of public property, there being no evidence but the foregoing transcript to establish the charge, which evidence is not sufficient.

In the five cases above, there is *no evidence* to warrant the credit claimed in either case.

6th. The services of the defendant, while chief engineer, charged with the duties of the engineer department, in conducting the affairs connected with the *civil works of internal improvement* carried on by the United States, are not extra official services for which he is entitled to credit in this action.

7th. There is no evidence that the defendant performed any extra official service in conducting the affairs connected with the execution of the act of Congress of 14th July, 1832, to provide for the taking of certain observations preparatory to the adjustment of the northern boundary line of the State of Ohio."

8th. The services alleged to have been performed by the defendant at one of the desks or bureaux of the War Department, the claims to which are specified in an account dated March 23d, 1841, and appended to Benjamin Fowler's deposition, taken March 16, 1842, if such services were performed at the bureau of the chief engineer, and professedly in that capacity, they were among the duties appertaining to the office, and such as the defendant was bound to perform as chief engineer, without being entitled to any extra compensation above his pay and emoluments as a brigadier general in the army of the United States. And as to items numbered from one to twenty-two, in the same account for examining and reporting on various subjects, for which the defendant claims extra official compensation, his evidence, and the evidence of the United States, show them to have been examinations and reports on matters appertaining to the office of chief engineer. So are the reports on their face, so far as they have been given in evidence, nor is there any evidence in any degree to the contrary. To sustain some of them, no evidence whatever is offered; neither for making those in regard to which evidence has been offered, nor for such in regard to which no evidence has been offered, can the defendant claim extra compensation.

Exceptions.

To the giving of the eight instructions above set forth, and to the giving of each of them, the defendant by his counsel excepted.

The defendant, by his counsel, then prayed the court to instruct the jury as follows:

Defendant's instruction first given.

1. That under the first count of the declaration, the plaintiff is not entitled to recover against the defendant, for any money received by him, in any office or capacity other than chief engineer. Which instruction was given by the court.

Instructions refused.

2. That under the second count of the declaration, the plaintiff is not entitled to recover against the defendant, for any money received by him in any office or capacity not mentioned in the bill of particulars of demands furnished and filed by the plaintiff under that count, nor for any money which may have been received by the defendant at any other time than that mentioned in said bill of particulars, that is, the year 1839.

This last instruction was refused by the court, because there was no order made by the court on the plaintiff to furnish a bill of particulars, and on the memorandum furnished voluntarily to the defendant's counsel the court did not act, and might not have acted, if required to do so, under the circumstances, this being a matter of discretion.

3. That if the jury find from the evidence, that the defendant performed any of the services for which he has charged in the last item of his account, under the direction of the President or Secretary of War, and that such services were neither military nor civil engineering, he is entitled to compensation for such services as a set-off in this action. This last instruction was refused by the court.

4. That if the jury find from the evidence, that the defendant performed any of the services in the item of his account appended to Benjamin Fowler's deposition, under the direction of the President or Secretary of War, and that such services were not enjoined by the army regulations, the defendant is entitled to compensation for such services as a set-off in this action.

This last instruction was refused by the court, and the refusal reduced to writing in the following words:

"This instruction is refused—and the eighth instruction, given on part of the United States, is referred to as embracing the whole subject matter. The court is furthermore of opinion, that the President or Secretary could well refer to the chief engineer any matter for report, &c., which appertained to the particular service devolving on the engineer department, in cases where Congress, or either House, by law or resolution, required information from the President on that particular subject, aside from any injunction by the army regulations, and therefore the instruction cannot be given in the terms it is asked."

5. That if the jury find from the evidence, that the defendant, by the direction of the President or of the Secretary of War, performed any of the services charged for in the last item of his account, being the said item attached to Fowler's deposition, and that

the services so rendered were out of the limits of his official duties as chief engineer, he is entitled to compensation for such extra services, as a set-off in this action.

This last instruction was refused by the court, and the refusal was reduced to writing in the following words:

"The court refuses this instruction, because the whole evidence in the cause, without any exception, is written evidence, which the court is called on to construe and apply, and not the jury, and from such evidence to ascertain, as matter of law, what were the defendant's duties and acts; and taking all the evidence, and construing it the most favorably for the defendant, none is adduced shewing, or tending to shew, the defendant performed any service not appertaining to his station as chief engineer; and for the proper instruction on the item referred to, the eighth instruction on part of the United States, on this item, is to govern the jury.

"If for no other reason, this instruction would be refused because the said eighth instruction concludes the whole matter. There is no fact, therefore, to which this instruction could apply, and it again refers the matters of law to the jury—what the chief engineer's official duties were—assuming to withdraw their decision from the court, and out of the previous instruction."

To all which decisions and opinions of the court in giving the instructions on the part of the United States, and in refusing the instructions, which were prayed for by the defendant, and by the court refused, the defendant, by his counsel, excepts, and prays the court to sign and seal this his bill of exceptions, and that the same be made part of the record, which is done.

J. CATRON. [L. S.]

MISSOURI DISTRICT, *sct:*

I, Joseph Gamble, clerk of the circuit court of the United States, for the district of Missouri, certify that the foregoing, from page 1 to 108, both inclusive, is a full and true transcript of the record and proceedings of said court in a certain matter of controversy therein decided, between the United States, plaintiff, and Charles Gratiot, defendant, as the same is of record and on file in my office.

In testimony whereof, I hereto subscribe my name, and affix [L. S.] the seal of said court, at office in the city of St. Louis, the 10th day of August, 1843.

JO. GAMBLE.

MISSOURI DISTRICT, *sct:*

The President of the United States to the honorable the judges [L. S.] of the circuit court of the United States, for the eighth circuit and district [of] Missouri, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea, in said circuit court, between the United States, plaintiff, and Charles Gratiot, defendant, a manifest error hath happened to the great damage of the said defendant as afore-

said, as by his complaint appears. We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court on the second Monday of January, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the third day of May, in the year of our Lord one thousand eight hundred and forty-three.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

JO. GAMBLE,
Clk. U. S. C. C., Missouri district.

In obedience to the foregoing writ, I herewith transmit to the Supreme Court of the United States, a transcript of the record and proceedings of said circuit court in the plea in said writ mentioned.

JO. GAMBLE, *Clk.*

MISSOURI DISTRICT, *sct:*

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the Missouri district, wherein Charles Gratiot is plaintiff in error, and the said United States are defendants in error, to shew cause, if any there be, why the judgment rendered against the said Charles Gratiot, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, associate justice of the Supreme Court of the United States, and a judge of said circuit court, for the Missouri district, this 3d day of May, A. D. 1843.

J. CATRON.

I acknowledged service of the above citation, having received a copy thereof, Aug. 15th, 1843.

M. BLAIR,
U. S. Attorney for the district of Missouri.

Filed, , 1844.

[REC. LX, D. T. 1843.]—15